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Department of Labour, Canada
HON. G. D. ROBERTSON - MINISTER OF LABOUR

COMBINES INVESTIGATION ACT

INVESTIGATION INTO
AN ALLEGED COMBINE
IN THE

MOTION PICTURE INDUSTRY IN CANADA

Report of Commissioner

APRIL 30, 1931

OTTAWA: F. A. ACLAND, Printer to the King's Most Excellent Majesty, 1931

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OTTAWA, June 30, 1931.

The Honourable G. D. ROBERTSON,
Minister of Labour,
Ottawa.

SIR,—On May 2, 1931, I transmitted to you the Interim Report of Mr. Peter White, K.C., Commissioner appointed under the Combines Investigation Act to investigate an alleged combine in the motion picture industry in Canada. In the attached communication, which I have received to-day, Mr. White requests that his Interim Report, dated April 30, 1931, be considered his final report in this matter.

Yours faithfully,

F. A. McGREGOR,
Registrar, Combines Investigation Act.

OTTAWA, June 29, 1931.

F. A. McGREGOR, Esq.,
Registrar, Combines Investigation Act,
Department of Labour,
Ottawa.

Re Motion Picture Investigation

SIR,—Following the transmission of my Interim Report in this matter, a request was made by counsel for Famous Players Canadian Corporation, Limited, that he be given an opportunity to make further representations on behalf of that Corporation. This opportunity has been given, and I now report that in my opinion there is no occasion to make any alterations in the Interim Report as filed with you on April 30.

I would therefore ask you to consider that report as my final report herein.

Yours faithfully,

PETER WHITE,
Commissioner.

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for the Dominion Government.

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First National Pictures, Incorporated.
Canadian Universal Film Company, Limited.
United Artists Corporation, Limited.
Canadian Educational Films, Limited.
Fox Film Corporation, Limited.
Tiffany Productions of Canada, Limited.

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for B. and F. Theatres, Limited.

ARTHUR W. ROEBUCK,
for Mrs. Joshua Smith.

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REPORT OF COMMISSIONER

TORONTO, April 30, 1931.

F. A. McGREGOR, Esq.,
Registrar, Combines Investigation Act,
Department of Labour,
Ottawa, Ontario.

SIR,—Having been appointed, by Order-in-Council dated September 23, 1930, a Commissioner under the Combines Investigation Act to make an investigation into an alleged combine in the motion picture industry in Canada, and having undertaken the burden of such, I now beg leave to report the result of my investigation.

I. DEFINITIONS OF TERMS

The industry has to such an extent developed a vocabulary peculiar to itself that for the sake of clarity of expression it appears advisable to define certain of the terms. These definitions are intended to convey the meanings in which the terms are used in this report rather than to define them exhaustively or with perfect accuracy.

1. *Producer.*—The person making a motion picture up to and including the negative print.
2. *Distributor.*—An agency in Canada "selling" to the Exhibitors the right to show motion pictures. Each Distributor has 6 branch agencies or local exchanges, one in each "Key" City.
3. *Exchange.*—The local office of a Distributor in a "Key" City.
4. *Exhibitor.*—An owner or operator of a theatre where motion pictures are shown for expected profit.
5. *Film Board of Trade.*—An organization of Distributors in each "Key" City.
6. *Commitment.*—A pre-season contract between the Exhibitor and the Distributor for the right to one or more pictures to be played during the next "season" at one or more theatres on dates to be determined.
7. *Booking.*—The act of writing into the contract the dates upon which a picture is to be "played" at an individual theatre.

   The term "Booking" is also applied so as to include both booking and commitment. The context will determine the sense in which the term is used.
8. *Block Booking.*—A contract for a group of pictures offered as a whole. The number of films in a block or group is not uniform.
9. *Spot Booking.*—The making of a contract for a picture, the positive print of which is to be delivered and used in the individual theatre in the immediate future.
10. *Blind Booking.*—The making of a contract for a picture or a number of pictures which have not been produced and which consequently cannot be screened and seen before purchase.

11. *Negative Print.*—The first print on film and from which the positive prints are made.

12. *Positive Print.*—The print on film which is actually used in the machine for the production of the picture on the screen—sometimes spoken of as a film. The film now also carries the "track" from which the sound is reproduced. If not, a " disc " is used for the sound reproduction.

13. *Zone.*—An area or portion of a city or town, the limits of which are usually determined so as to include theatres directly competing against each other.

14. *Run.*—The period for which a picture is shown in a theatre—sometimes spoken of as a contract.

15. *First Run.*—The first showing of a picture in any city, town or zone.

16. *Down-town First Run.*—A first run in a down-town theatre, usually one of the principal theatres in the city or town. The expression is usually applied to the first showings in the larger cities.

17. *First Run in the Zone.*—Where the city or town is divided into Zones, the expression applies to the first run in a Zone after the first run in a down-town Zone.

18. *Second Run.*—The next showing of a picture after the first run. This applies either to the first run in a Zone, if after a down-town first run; or the second run in a Zone, that is the next showing after the first run in a particular Zone.

19. *Subsequent Run.*—All showings after a first run—which may be a second, third, fourth, fifth or sixth run.

20. *Long Run.*—A run of two weeks or more.

21. *Protection.*—The withholding of a picture from a second or subsequent run for a period of time after the close of a first or previous run.

22. *Clearance or Protection Period.*—The number of days elapsing between a first and second run or between a previous and a next succeeding Subsequent Run.

23. *Standard Exhibition Contract.*—A contract between a Distributor and an Exhibitor for the exhibition of a picture on the Standard form.

24. *Key Cities.*—The cities in Canada where there are local exchanges. These cities are:

    1. Toronto
    2. Montreal
    3. Halifax
    4. Winnipeg
    5. Calgary
    6. Vancouver

25. *Feature Picture.*—A picture of four reels or more.

26. *Short Subject.*—A picture of less than four reels.

27. *News Reel.*—A picture depicting current news, usually of one reel.

28. *Road Show.*—A special feature picture shown at a special admission price and usually on special terms.

    Also—A legitimate stage performance where the company goes on tour.

29. *Sound on Film.*—A film where the sound reproduction device is part of the film, the part being called a " track ".

30. *Disc Machine.*—A projecting machine, of which the sound reproducing device is a disc resembling a phonograph record and which is synchronized with the film or print.

31. *Pooling Agreement.*—An agreement by which the receipts and expenses of two or more theatres are pooled and profits or losses divided between the parties to the agreement.

32. *Operating Agreement.*—An agreement providing for the operation of a theatre on a profit and loss sharing basis.

33. *Booking Agreement.*—An agreement by which one person does the contracting for and/or the booking of pictures for a theatre not necessarily operated by him.

34. *Flop.*—A picture which fails to attract patronage and consequently fails to produce expected box office receipts.

35. *Independent Theatre.*—Spoken of as one in which Famous Players Canadian Corporation, Limited, has no direct or indirect financial interest.

36. *Closed Town.*—A city or town where the only theatre or theatres are operated by Famous Players or a subsidiary or affiliation of Famous Players.

37. *Season.*—The motion picture exhibiting season extends roughly from the 1st of September to the succeeding 31st of August in each year.

38. *Release.*—When a picture is ready to be exhibited and the positive prints are ready for screening and distribution, the picture is said to be released. The noun has a corresponding meaning.

39. *Score Charge.*—A charge for the use of the sound part of the film —sometimes spoken of as a *synchronization charge.* These are referred to also as "*sound terms*".

40. *Split.*—
    (*a*) The division of the pictures of one producer between two or more exhibitors in a city, town or zone.
    (b) The division of the gross receipts in excess of certain specified amounts.
    A "*Split Town*" is one in which there is a split as in (*a*) above.

41. *Person.*—Includes, where the context requires or permits, an individual, a partnership and/or a corporation.

II. THE INDUSTRY—ITS ORGANIZATION

The Motion Picture Industry has three principal branches:

(*a*) The Producer.
(*b*) The Distributor.
(*c*) The Exhibitor.

1. PRODUCERS

The number of pictures produced in Canada has been of such minor importance that except as specifically mentioned it may be disregarded. The bulk of the pictures exhibited in this country are produced in the United States. 73 pictures of British origin were released in Canada during the release year or season of 1928-9, and the year 1930. The total number of all feature pictures released in Canada in the release year 1928-9 was 548, and in 1929-30, 401. (Exhibit 282). This means that of the total number of pictures released only 7·69 per cent were British.

The principal United States producers releasing pictures in Canada are:

(1) Paramount Publix Corporation (successors to Famous Lasky Corporation).
(2) First National Pictures Incorporated.
(3) Warner Bros. Pictures Incorporated.
(4) Universal Pictures Corporation.
(5) United Artists Corporation.
(6) Sono-Art Productions Incorporated.
(7) Educational Films Incorporated.
(8) Columbia Pictures Corporation.
(9) Pathe Pictures Incorporated.
(10) Radio-Keith-Orpheum Corporation.
NOTE.—These two have recently merged under the name "R. K. O. Pathe Pictures Incorporated".
(11) Metro-Goldwyn-Mayer Pictures Incorporated.
(12) Tiffany Productions Incorporated.

The principal British producers whose pictures have been exhibited in Canada are:

(1) Gaumont British Corporation Limited.
(2) Gainsborough Productions Limited.
(3) British International Pictures Limited.

2. DISTRIBUTORS

The principal distributors of films in Canada are:

(1) *Famous Lasky Film Service Limited*

This company distributes the pictures produced by Paramount Publix Corporation, referred to as Paramount Pictures. 100 per cent control of this company is in Canadian Paramount Corporation, Limited, seven-eighths of the shares of which are owned by Paramount Publix Corporation. (Evidence pp. 34-40 and 1060). Canadian Paramount was intended originally to be both a distributor and an exhibitor, but on its formation Famous Players took over all Canadian Paramount's interests except in the distributing companies. Since this, Canadian Paramount has been engaged only in distribution through its two 100 per cent owned subsidiaries, Famous Lasky Film Service Limited and Regal Films, Limited.

(2) *Regal Films, Limited*

This company distributes the productions of Metro-Goldwyn-Mayer Pictures Inc. and Pathe, also those of British International Films Limited. It is also controlled by Canadian Paramount Corporation Limited by 100 per cent share ownership and thus indirectly controlled by Paramount Publix Corporation.

(3) *R.K.O. Distributing Corporation of Canada, Limited*

This company distributes the productions of Radio-Keith-Orpheum Corporation. Recently, however, a new corporation has been formed in the United States under the name of R.K.O. Pathe Distributing Corporation, which looks like a merger of the R.K.O. and Pathe interests. Regal Films, Limited, however, continue to distribute Pathe pictures.

(4) *Fox Film Corporation, Limited*

This company distributes the pictures produced by Fox Film Corporation.

(5) *Vitagraph Limited.*

This company distributes in Canada the productions of First National Pictures Incorporated and Warner Bros. Pictures Inc. and Vitagraph Inc.

(6) *Canadian Educational Films Limited.*

This company distributes in Canada the productions of Educational Films Incorporated, and of Sono-Art Productions Incorporated under the name "Sono-Art-Worldwide."

(7) *Canadian Universal Film Co. Limited.*

This company distributes the productions of Universal Pictures Corporation.

(8) *United Artists Corporation, Limited.*

This company distributes in Canada the productions of United Artists Corporation.

(9) *Columbia Pictures of Canada, Limited.*

This company distributes in Canada the productions of Columbia Pictures Corporation.

(10) *Tiffany Productions of Canada, Limited.*

This company occupies an office with Canadian Universal Film Co. Limited, and the physical distribution of the pictures sold by it is made by the Universal Company. It distributes the productions of Tiffany Productions, Incorporated.

This distributor also, through the Universal Company, distributes for Gaumont British Productions of Canada, Limited, which distributes the productions of Gaumont British Corporation Limited and Gainsborough Productions, Limited.

There are a few smaller exchanges, such as the Excellent Film Exchange, which sell short subjects produced by independent producers in the United States.

3. Exhibitors

There are 1,108 motion picture theatres in Canada, of which 809 are owned and operated as units by single owners, and 299 by owners or operators of three or more theatres. Of the 299 theatres, 207 are either owned or operated by Famous Players Canadian Corporation, Limited (hereinafter in this report referred to as "Famous Players") or its subsidiaries, or companies in which it is interested, or under operating agreements or pooling agreements. Famous Players with its affiliations is the only exhibitor operating any great number of theatres. Famous Players contract for and book pictures for nearly all of these 207 theatres, the principal exceptions being the Dewees, the Allen, the "B & F" and the Markell affiliations.

There is no effective organization of independent theatre owners and each exhibitor contracts individually for his own theatre. Recently, however, an organization known as Exhibitors' Co-operative of Canada, Limited, has been formed, with a membership operating about 31 theatres, which does some collective bargaining for pictures, but in a comparatively small way.

For purposes of distribution Canada is divided into six territories, each served from one of the Key Cities mentioned in definition 24.

The situation in each of these territories may be summarized as follows:

SINGLE OWNERS

Territory	Served from	Theatres
1. Ontario	Toronto	258
2. Quebec	Montreal	146
3. Winnipeg	Winnipeg	124
4. Calgary	Calgary	144
5. British Columbia	Vancouver	41
6. Maritime	Halifax	96
		809

OWNERS OF THREE OR MORE THEATRES

	Theatres	
1. Ontario	117	
2. Quebec	53	
3. Maritime	24	
4. British Columbia	30	
5. Calgary	30	
6. Winnipeg	45	299
Grand Total		1,108

4. Purchase of Pictures

The producers in advance of the season announce through their respective distributors the number of pictures that each proposes to release during the approaching season, with the names of the stars, usually the title (this is sometimes changed), and certain particulars describing to some extent each picture.

For the current season of 1930-31, the producers propose to release feature pictures as follows:

Paramount Publix	74
Metro-Goldwyn-Mayer	52
Fox	48
Warner Bros	35
First National	35
R. K. O	34
Pathe	20
Tiffany	48
Columbia	20
United Artists	19
Universal	20
Sono-Art-Worldwide	17
Gaumont British	20
British International	20
Total	462

Famous Players deal with the head offices in New York of most of the producers or with an executive officer from New York who comes to Toronto for the purpose. Other exhibitors deal with either the manager for Canada of the distributor or one of the branch managers, or a salesman. Each distributor company maintains a force of travelling salesmen, and in practically all cases the exhibitor signs a contract which has no effect until approved by the head office in New York.

Most distributors endeavour to make commitments with the exhibitors for the whole number of pictures to be released by the distributor or a " block " of such pictures. Some distributors instead of making a commitment require the exhibitor to sign a separate Standard Exhibition Contract for each picture at the time the bargain is made, whether such bargain is for a " block " or a single picture.

An example of a commitment appears in Exhibit 97, being between Famous Players and Fox, for blocks of pictures to be shown in each theatre named in the schedule and to be released by Fox during the season 1930-31. It is to be observed that of the 48 pictures expected to be released, Famous Players is to have first choice as each is released, and is to play in each theatre during the season the minimum number of pictures set opposite the name of each theatre in the schedule, being from 15 to 40 pictures.

United Artists, owing to the fact that that corporation is the selling organization for its members, who are artists of note producing their pictures individually, sells the pictures of each artist separately from the pictures produced by or for the other artist members.

It frequently happens that the number of pictures expected to be released by the individual producer is reduced by censorship or alteration of the producer's plans, and it sometimes happens that a picture not in contemplation at the time of the pre-season arrangement is substituted for one the production of which has been contemplated.

Most of the commitments and/or contracts made by Famous Players provide for the paying for the pictures (as exemplified by Exhibit 97) on the basis of a percentage of gross receipts, the exceptions being those houses where vaudeville is played. The pictures shown in these houses are paid for by a " flat rental " or fixed sum for the run.

It is a fair conclusion from the evidence that while there may be a certain amount of bargaining between Famous Players and the distributors, the percentages and flat rentals paid by Famous Players are fixed by them, and the distributors, if they would deal with Famous Players, must accept Famous Players' terms. This subject will be dealt with more in detail later.

III. COMPANIES CITED FOR INVESTIGATION

1. Famous Players Canadian Corporation, Limited

This company was incorporated by letters patent (Exhibit 1) issued under the Dominion Companies Act and dated January 23, 1920. The authorized capital was $15,000,000 divided into 150,000 shares of the par value of $100 each—65,000 of which were first preference cumulative, 10,000 of which were second preference, and the remaining 75,000 were common shares. All had equal voting rights.

Supplementary letters patent (Exhibit 2) were issued on March 30, 1928, confirming two by-laws passed on March 29, 1928, decreasing the capital stock from $15,000,000 to $12,700,900 by the cancellation of 22,991 unissued first preference shares; changing the common shares to shares without par value and increasing the number of common no par shares to 600,000. The preference shares have been redeemed. The authorized capital therefore now consists of 600,000 no par common shares, and of these there had been issued, as of August 30, 1930, 378,660 shares. Of these issued shares, approximately 189,300 are held by the Montreal Trust Company under a pooling agreement dated March 7, 1929 (Exhibit 115). Of these, Paramount Famous Lasky Corporation, the predecessor of Paramount Publix, contributed 165,375 shares and N. L. Nathanson about 24,000.

Voting trust certificates or certificates of beneficial ownership were issued in respect to these pooled shares and sold to the public by Royal Securities Corporation, Limited. These were rather widely held. Subsequently, in April, 1930, an offer (see Exhibit 300) was made by Paramount Publix Corporation to exchange four shares of Paramount Publix for five shares of Famous Players. A large number of shareholders and of the holders of voting trust certificates accepted this offer, so that as of August 30, 1930, Paramount Publix were the holders of 355,131 shares of which 174,766 represented share certificates and 180,375 represented voting trust certificates, out of the total issue of 378,660 shares, or 93·786 per cent of the total issued shares. Under the agreement Nathan L. Nathanson, then General Manager of Famous Players, Isaak Walton Killam, President of Royal Securities Corporation, and Adolph Zukor, President of Paramount Publix Corporation, are the Voting Trustees.

The ostensible object of the pooling of the shares was to give the public the impression that Famous Players was a Canadian controlled company inasmuch as two of the Voting Trustees were Canadians and the pool had share control of the Company. See Exhibit 323, a circular issued by Greenshields & Co., which states:

> "Control of the Company is being assured to Canada through the purchase of common stock previously held by American interests. For the purpose of retaining this control and providing continuity of the present successful management, voting control has been placed for a period of ten years in the hands of three trustees under a deposit agreement in favour of the Montreal Trust Company."

This circular was issued to the public as an inducement to buy shares which had been purchased from Paramount Famous Lasky Corporation by Royal Securities Corporation, Limited, and which were pooled. The purchasers were to receive Voting Trust Certificates, the definitive certificates being held by the Trust Company. (See also evidence of I. W. Killam, pp. 6859-6860).

The real object of the voting trust was to protect Mr. Zukor and his company in respect to a franchise agreement which gave Famous Players an option in the Canadian market on all pictures produced by the United States company. (See Mr. Killam's evidence, pp. 6861 and 6884-6887).

This franchise agreement, which T. J. Bragg, the present Secretary-Treasurer of Famous Players (Evidence, p. 20) states "is probably the most valuable asset acquired by Famous Players Canadian Corporation, Limited at its organization", and in respect to which Arthur Cohen, the present General Manager of Famous Players (Evidence, p. 20) states, "That is the most valuable of all the assets", meaning all of the assets acquired at that time; and which Mr. Killam, (Evidence, p. 6884) admits was the foundation of the original financing of the Famous Players Canadian Corporation, Limited or at least " essential to assure the stability of the investment of the large amount of money being spent on theatres", appears on page 30 of the minutes of the Famous Players. It is between Famous Players-Lasky Corporation, thereinafter called " the New York Corporation" and Famous Players Canadian Corporation, Limited, thereinafter called " the new company". The New York Corporation grants to the new company for a period of twenty years the right, privilege and franchise to exhibit the productions made by the New York Corporation and its subsidiaries, in the theatres operated by the new company in the Dominion of Canada in each place where the new company or its subsidiaries operate a theatre, before such pictures are shown in any other theatre in said place, such right or privilege being generally known or referred to in the trade as a "first run." The execution of this agreement was authorized on February 7, 1920, and has been apparently in operation since that time.

The franchise agreement was attached to and formed part of an agreement dated February 5, 1920, between Famous Players-Lasky Corporation, the predecessor of Paramount Publix Corporation, thereinafter referred to as " the New York Corporation" and the Famous Players Canadian Corporation, Limited, thereinafter called " the Canadian Corporation". The latter acquired certain assets consisting of:

(1) All shares owned by Canadian Paramount Corporation Limited in:
    (*a*) Regent Theatres Limited.
    (*b*) Strand Theatre Co. Limited.
    (*c*) Paramount Theatres Limited.

(2) Properties of Canadian Paramount Corporation, Limited, in Vancouver, Winnipeg and Ottawa.

(3) The shares of Canadian Paramount Corporation, Limited, in Dominion Theatres (Vancouver) Limited, and Victoria Dominion Theatres Limited.

(4) All other assets of Canadian Paramount Corporation, Limited, except its shares in Regal Films, Limited, and Famous-Lasky Film Service Limited.

The last mentioned two companies are referred to above in the list of distributors.

The New York Corporation agreed to pay to the Canadian Corporation $3,720,000 in deferred payments, and in consideration of this the Canadian Corporation agreed to issue to the New York Corporation:

(1) 40,000 first preference shares	$ 4,000,000
(2) 10,000 second preference shares	1,000,000
(3) 75,000 common shares	7,500,000
Total	$12,500,000

A large block of these shares were sold to the public by Royal Securities Corporation. The first preferred were all sold at its inception, and by this agreement Famous Players acquired and commenced operations as exhibitors with the following theatres:

(1)	*Regent*	*Toronto*	Ontario
(2)	*Strand*	"	"
(3)	*Teck*	"	"
(4)	*Family*	"	"
(5)	*King George*	"	"
(6)	*Alhambra*	"	"
(7)	*Garden*	"	"
(8)	*Strand* (now the *Tivoli*)	*Kingston*	"
(9)	*Strand*	*Ottawa*	"
(10)	*Regent*	*Guelph*	"
(11)	*Regent*	*Galt*	"
(12)	*Dominion*	*Vancouver*	B.C.
(13)	*Dominion*	*Victoria*	"

On February 26, 1920, Messrs. A. Zukor, H. D. Cunnick, W. J. Sheppard, J. P. Bickell, J. B. Tudhope, N. L. Nathanson, W. D. Ross, I. W. Killam, Sir Herbert Holt and Lord Beaverbrook were elected directors of Famous Players Canadian Corporation, Limited, with Mr. Zukor as President, Mr. Bickell as Vice-President and Mr. N. L. Nathanson as Managing Director.

The present Directors are:

Adolph Zukor, President.
J. P. Bickell, Vice-President.
Arthur Cohen, Managing Director.
Sir William Wiseman.
I. W. Killam.
W. J. Sheppard.
J. B. Tudhope.
S. R. Kent.
Mr. T. J. Bragg is Secretary-Treasurer. Messrs N. G. Barrow, C. Robson and H. Sedgwick are assistant secretaries.

Since its organization Famous Players has formed and acquired interests in many companies, and made agreements with many persons engaged in the motion picture business and its branches and offshoots, has acquired and entered into agreements for the operation, jointly and otherwise, of many theatres, details of which will appear later in this report when dealing specifically with these subjects.

2. B. & F. Theatres Limited

By an agreement (Exhibit 91) dated December 18, 1926, Famous Players entered into an agreement with Irving Samuel Fine and Samuel Bloom, lessees and operators of four theatres in Toronto and having the erection of an additional theatre in contemplation. The agreement provides for the formation of a company to be called B. & F. Theatres Limited, with a capital of $100,000 divided into 1,000 shares of $100 each, and that the charter and by-laws should be prepared by Famous Players' solicitors, and that the company's affairs should be managed by four directors, two, the President and Secretary-Treasurer, to be nominees of Famous Players, and two, the Vice-President and Managing-Director, to be nominees of Bloom and Fine. It further provides that the Head Office of the company shall be in the office of Famous Players, and that the books and records shall be under the control of Famous Players.

The agreement further provides that Bloom and Fine should transfer to B. & F. Theatres Limited their interest in four theatres then operated by them, viz:

(1) *La Plaza.*
(2) *The Christie.*
(3) *The Mavety.*
(4) A theatre at Woodbine and Gerrard Streets, then about to be constructed, later called *The Gerrard,*

all in Toronto, and that Famous Players should transfer its interest in five theatres, viz:

(1) *The Teck* (under lease to Paramount Theatres Limited from the owner, Famous Players).
(2) *The Beaver* (then under lease from one Joy to Beaver Theatre Co. Limited, a Famous Players incorporation).
(3) *The York* (under lease to Famous Players from one Dunning).
(4) *The Classic* (under lease to Paramount Theatres Limited from one Mazza).
(5) *The Danforth East* (under lease to Paramount Theatres Limited from Axler and Posnick).

The transfers were to be as of January 3, 1927.

The agreement provides that Bloom and Fine were to be employed by the new company and agree not to compete for a period of ten years in any capacity, or be otherwise than as such employees, engaged in any way in Toronto in the motion picture business. Bloom and Fine were to book and select pictures and other entertainments, " but they shall not contract for pictures or other entertainments of any kind without the approval in writing of Famous Players."

The general policy of the new company was to be at all times subject to the approval of Famous Players, Bloom and Fine agreeing to conform to all requirements of Famous Players regarding the administration of B. & F. Theatres, Limited.

B. & F. Theatres Limited was accordingly incorporated under the Ontario Companies Act by letters patent dated December 31, 1926, and as a result of the carrying out of the agreement (Exhibit 91) the transfers were made, and Bloom and Fine on the one hand and Famous Players on the other hand each acquired a 50 per cent stock interest in the company, which each now holds. The first permanent directors were:

Clarence Robson, President.
S. Fine, Vice-President.
S. Bloom, Managing Director.
T. J. Bragg, Secretary-Treasurer.

Mr. Robson is supervisor of theatres in Eastern Canada for Famous Players. These persons have since held these offices and are the present holders.

B. & F. Theatres Limited controls, by 100 per cent stock ownership, Beaver Theatre Company, Limited, with an Ontario charter dated October 2, 1916, and a capital stock of $40,000. The lease of the *Beaver Theatre* above-mentioned is vested in this company. The directors and officers are:

C. Robson, President.
T. J. Bragg, Vice-President.
S. Bloom, Managing Director.
L. Geering, Secretary.
S. Fine, Treasurer.

B. & F. Theatres Limited, until October 17, 1930, held a 50 per cent stock interest in Carleton Theatre Limited which sublet the *Greenwood Theatre* to B. & F. Theatres Limited. The capital of this company is $50,000. The directors and officers are:

W. A. Summerville, President.
S. Bloom, Vice-President.
C. A. Walton, Secretary-Treasurer.
B. E. Knight.
S. Fine.

The *Greenwood Theatre* in Toronto was sold in 1930 to one Staniewiski, and the stock holdings were relinquished at the same time.

B. & F. Junction Theatre, Limited, was formed as a subsidiary of B. & F. Theatres, Limited, with a capital of 8,000 no par value shares, of which 1,725 shares are said to have been issued at a valuation of $5 each. This company, though still subsisting, has not entered upon active operation. The directors and officers are:

C. Robson, President.
T. J. Bragg, Treasurer.
S. Bloom.

The Secretary is N. G. Barrow.

3. EASTERN THEATRES LIMITED

Eastern Theatres Limited was incorporated by letters patent under the Dominion Companies Act and dated May 12, 1919, with head office at Toronto, and with a capital of $1,800,000, being $1,000,000 7 per cent cumulative preference and 32,000 common shares of the par value of $25 per share. Of this, $500,000 of preferred and all of the common shares were issued. The company operated the *Pantages Theatre* (now the *Imperial*) in a downtown first run location in Toronto. In November, 1927, Famous Players acquired control through the purchase of a majority stock interest. On October 20, 1927, the directors were:

J. P. Bickell.
N. L. Nathanson.
W. J. Sheppard.
J. B. Tudhope.
Frank E. Maulson.
Hon. W. D. Ross.

About 75 per cent of the share capital was acquired by Famous Players in 1927, and by August 18, 1930, by further acquisitions, the stock interest of Famous Players had been increased to 93·60 per cent. As of this date the directors and officers were:

A. Cohen, President.
C. Robson, Vice-President.
N. G. Barrow, Secretary.
T. J. Bragg, Treasurer.
H. Sedgwick, Assistant Treasurer.
John Arthur.

Mr. Arthur is an employee of Famous Players, directing entertainments.

4. PREMIER THEATRES LIMITED

This company was incorporated by the Allens with an authorized capital of $50,000—5,000 common shares of $10 each, and with an issued capital of $50, and all the issued capital stock was acquired by Theatre Holding Corporation, Limited, under agreements dated January 2, 1928 (Exhibits 117-A and 117-C), and an agreement dated May 1, 1928 (Exhibit 117-B). This company operates the *Weston Theatre,* Weston, Ontario, under lease and agreement with A. Cohn on a 50 per cent profit sharing basis. The directors and officers are:

H. Allen, President.
A. Cohn, Vice-President.
S. Crafton, Secretary-Treasurer.

5. MANSFIELD THEATRE COMPANY, LIMITED

This company was incorporated under the Dominion Companies Act by latters patent dated July 31, 1923, with a capital of $1,750,000 authorized and all issued, being 7,500 preference shares of $100 each and 10,000 common shares of the par value of $100 each. The voting rights are vested in the holders of common shares. The head office is at the office of Famous Players at Toronto.

The company owns and operates *Loew's Theatre, Montreal.* Loew's Montreal Theatres Limited, the former owner of this theatre, in the fall of 1922, was in financial difficulties and Famous Players advanced to it $100,000 by way of loan under agreement of March 21, 1923 (Exhibit 28-B), which provided for the purchase of the business of the Loew Company as a going concern, and the formation of a new company, to be promoted and organized by Famous Players, which was organized as Mansfield Theatre Company, Limited. The preference stock and 2,500 common shares were issued to the Loew Company as part consideration for the sale, and the Mansfield Company assumed the debts of the Loew Company up to $325,000. The Loew Company also agreed not to compete in Montreal.

The Loew theatre was transferred to the new company in due course and has since been owned and operated by it. Under the agreement Famous Players was to receive and did receive 51 per cent of the common shares, and the balance thereof, except the 2,500 shares above mentioned, were issued to Marcus Loew's Booking Agency of New York in satisfaction of their claims against the Loew Company. (Evidence, p. 379.) The consideration for the issue of 51 per cent of the common shares to Famous Players was the undertaking " of the reorganization and seeing that the company was financed properly." (Evidence, p. 381.) Famous Players were to receive a booking fee of $100 per week during the life of the agreement, twenty years.

6. UNITED AMUSEMENT CORPORATION, LIMITED

By an agreement (Exhibit 27-A) of September 9, 1924, between United Amusements Limited, of the First Part, and Independent Amusement Limited, of the Second Part, and Famous Players Canadian Corporation, Limited, of the Third Part, it was agreed that the United Amusements Limited and Independent Amusement Limited would cause a company to be formed under the name "United Amusement Corporation, Limited."

United Amusements Limited agreed to transfer all its assets as a going concern, including 17 theatres, all in the Province of Quebec, to the new company for shares of that company. Independent Amusement Limited agreed to surrender 2,689 shares of United Amusements Limited for cancellation. United Amusements Limited agreed to surrender 160 shares of Independent Amusement Limited for cancellation. Famous Players Canadian Corporation Limited agreed

(*a*) to give the new company the benefit of its franchise agreement with Famous Players-Lasky Corporation of January 20, 1920;
(*b*) until December 31, 1939, not to own or be interested in any theatre in Montreal, outside of the down-town district bounded by St. James, Bleury, Sherbrooke and Guy streets;
(c) to purchase 350 preference shares of the new company at par.

In pursuance of the terms of this and other subsequent agreements, United Amusement Corporation, Limited, was incorporated under the laws of the Province of Quebec, with its head office at Montreal. Shares were issued as follows:

Class A no par shares	65,974
Class B no par value	8,121

of which Famous Players have acquired:

Class A—28·07 per cent.
Class B—28·52 per cent. (Evidence, p. 336.)

By agreement (Exhibit 27-C) dated September 9, 1924, it was agreed that a pool be formed of certain shares of Famous Players and other shareholders sufficient to constitute control for 15 years. Under this agreement Famous Players deposited 4,500 shares and other shareholders deposited 3,400 shares, a total of 7,900 shares. Voting power in respect to these shares was vested in seven voting trustees named in the agreement, two of whom were N. L. Nathanson and J. P. Bickell of Famous Players. The pool may be dissolved on a vote of the majority of the voting trustees, but I am informed that the pooling agreement is still in force.

Pursuant to the agreement (Exhibit 27-A), two nominees of Famous Players are on the directorate of this company. Upon incorporation, 17 theatres, including one in Sherbrooke, one in Lachine and the other 15 in Montreal, were transferred to United Amusement Corporation, Limited. On November 1, 1927, Famous Players, by an agreement with Standard Amusement Corporation, Limited (Exhibit 27-F) acquired control of the *Park Theatre, Verdun,* Quebec, which was thereafter to be considered as part of the Famous Players chain. Famous Players agreed not to be interested in any theatre within a mile of the *Park,* and if it did, the net profits were to be divided in the same proportions as the net profit of the *Park.* Famous Players thus acquired the right to dictate what pictures should be shown at this theatre for the period of ten years from the date of the agreement, and for a like period the right to a 50 per cent share of the profits, all without any capital investment on its part. United Amusement Corporation, Limited, joined in the agreement to covenant that it would not construct or have any interest in any theatre within a mile of the *Park Theatre.*

By agreement dated November 14, 1927 (Exhibit 27-G) Famous Players agreed to pay to United Amusement Corporation, Limited, all money received under the agreement (Exhibit 27-F) aforementioned. Subsequently two other theatres in Montreal and one in Lachine were acquired by United Amusement Corporation, Limited, its chain now comprising 21 theatres.

7. UNITED THEATRES LIMITED

This Company was incorporated under the Ontario Companies Act by letters patent dated November 27, 1918, with a capital of $100,000, being 1,000 shares of $100 each, of which 850 shares have been issued. The Head Office was originally in Sarnia, Ontario.

On December 19, 1927, Famous Players acquired 427 shares of this company, being 50·23% of the issued capital stock, for $100,000 in cash (Evidence p. 3400-3402). Famous Players books for the theatre, and receives a booking fee of $100 per week. The directors and officers at the opening of this investigation were:

C. Robson, President.
J. F. Meyers, Vice-President.
N. G. Barrow, Treasurer.
H. Sedgwick.

All are executive officers and employees of Famous Players, except Mr. Meyers, who was one of those from whom Famous Players purchased stock. Mr. Meyers has recently died and at the time of taking the evidence on this subject no director had been elected in his place.

There is another company incorporated in British Columbia called United Theatres Limited, which is or was controlled by W. P. Dewees, and which will be referred to in another part of this report.

8. Theatre Holding Corporation Limited

This company was incorporated by letters patent dated March 9, 1928, issued under the Ontario Companies Act, with an authorized capital of $170,000, divided into 1,500 preferred shares of $100 each and 20,000 common shares of $1 each. All of the capital has been issued. This is a holding company, 50% of both preferred and common shares being held by Famous Players, and the balance having been issued to the Allen interests.

The directors and officers are:

H. Allen, President.
A. Cohn, Vice-President.
S. Crafton, Secretary.
T. J. Bragg, Treasurer.

The holdings of the company are (Exhibit 6, p. 10):

(1) Brock Theatre Limited—All the issued shares ($50 par value).

This company does not operate a theatre but owns lands on Eglinton and Livingstone Avenues, Toronto.

(2) Crystal Theatre Limited—All the issued shares ($50 par value).

This company operates the *Royce Theatre, Toronto.*

(3) Federal Theatre Limited—All the issued shares ($50 par value).

Owns the *Hollywood Theatre, Toronto.*

(4) Gem Theatre Limited—All the issued shares ($50 par value).

Operates the *Capitol, Smith's Falls.*

(5) Trent Theatre Limited—75 per cent of $39,000, the total issued capital stock.

Operates the *Capitol Theatre* (originally the *Temple*), *Wallaceburg,* Ontario.

(6) Leamington Theatre Limited—75 per cent of the issued capital stock of $39,000.

Operates the *Capitol Theatre, Leamington.*

(7) Model Theatre Limited—All the issued shares ($50 par value).

Owns and operates the *Capitol Theatre, New Toronto.*

(8) Monarch Theatre Limited—All the issued shares of $8,200 par value.

Owns and operates the *Classic Theatre, Cobalt,* Ontario, and controls under lease the *Broadway Theatre, Haileybury,* Ontario, which is closed. (Exhibit 6, p. 10.)

(9) Premier Theatres Limited—All the issued capital stock ($50 par value) the authorized capital being $50,000.

Leases and operates the *Weston Theatre, Weston,* on a 50 per cent profit sharing basis. See also pp. 20 and 21 of this report.

(10) Savoy Theatre Limited—All the issued shares ($50 par value).

Owns and operates the *King George Theatre, Port Colborne,* Ontario.

(11) Victoria Theatre Limited—All the issued shares ($50 par value).

Operates under lease the *Park Theatre, Preston,* Ontario.

The minute book and other corporate records of this company and its subsidiaries have not been investigated except such records as were obtained in the offices of Famous Players, which are separate from those of Theatre Holding Corporation, Limited.

Theatre Holding Corporation, Limited, was incorporated in pursuance of an agreement dated January 2, 1928, between Herbert Allen, called "Allen," of the first part, Rae Allen, Sara Allen, Blanche Rosenfeld and Sol Allen, of the second part, and Famous Players Canadian Corporation, Limited, of the third part. By this agreement (Exhibit 117-A) Famous Players purchased for $32,500 shares of Allen and the parties of the second part in certain companies, and their interests in certain leases of theatre properties.

It was agreed that a holding company should be formed with the wide powers set out in the agreement. Shares except qualifying shares, were not transferable except on the consent of two directors. The number of directors was to be four, two of whom should be nominees of Allen and two of Famous Players. It was also provided that on an equality of votes, the president or chairman should not have a second or casting vote, and that the quorum should be four directors.

The shares and leases above mentioned were to be transferred to the holding company for $170,000, being $150,000 in preference shares at par and $20,000 in common shares at $1 per share, to be divided fifty per cent to Allen and the parties of the second part on the one hand, and fifty per cent to Famous Players. Provision was made that if Allen or the parties of the second part acquired a theatre or motion picture enterprise, it should be offered to the Holding Company at the price and upon the terms on which it was acquired.

It was further agreed that the business of all theatre companies and of the theatres mentioned in the agreement or acquired thereafter should be managed and operated by Premier Operating Corporation, Limited, a company with an Ontario charter controlled by the Allens, so long as either Jule Allen or J. J. Allen is actively associated with the operating company, or both Herbert Allen and Louis Rosenfeld are so associated. Provision was made for the purchase of shares in the Monarch Theatre Limited, and the leases of the *Princess* and the *Park Theatres* in *Preston*, Ontario.

It was also provided that if motion picture enterprises were acquired by Allen or the parties of the second part in the City of Montreal, under an agreement dated June 1, 1926, between Amherst Theatres, Limited, Allen's Westmount Theatre, Limited, of the second part, Herbert Allen of the third part, and United Amusement Corporation of the fourth part, or if Allen or the party of the second part should acquire a motion picture enterprise in Kitchener or Stratford, they should not be required to offer such motion picture enterprise to the Holding Company.

It was further provided that in case Premier Theatres, Limited, or any other company owned or controlled by the Holding Company, should acquire the *Mt. Dennis Theatre* at *Mount Dennis,* such theatre should be operated under an arrangement similar to that under which the *Weston Theatre* was then being operated by Abby Cohn. (See Premier Theatres Limited, *supra*).

A reference was also made to a supplemental agreement of January 2, 1928, (Exhibit 117-C) which is between the same parties as Exhibit 117-A except the Holding Company, and it provided that if Allen or the parties of the second part during 15 years from the date thereof acquired any theatre property or contracted for the purchase or lease of such and decided to erect a theatre thereon, or to sell the property to any other person for such purpose, then they should first offer such property or contract to the Holding Company or to a subsidiary company of the Holding Company at the same price and upon the same terms and conditions as the same was acquired, or at an appraised value in certain cases. If the Holding Company did not take over the property, the party who originally acquired had the right to deal with the same or with such a contract as was mentioned for its or their sole use and benefit subject to the provisions of this agreement. These parties were not to compete against each other in the motion picture business.

A further agreement was entered into (Exhibit 117-B) dated May 1, 1928, between the parties of the agreement of January 7, 1928 (Exhibit 117-A) and Theatre Holding Corporation, Limited, called "the Holding Company" of the fourth part. This implements and carries out the provisions of the agreement (Exhibit 117-A) called "the principal agreement" and also the agreement of January 2 (Exhibit 117-C), called "the supplemental agreement".

The companies referred to in Schedule "A" are:

(1) Premier Theatres Limited.
(2) Richmond Theatre Limited.
(3) Victoria Theatre Limited.
(4) Sherbourne Theatre Limited.
(5) Crystal Theatre Limited.
(6) Wallaceburg Theatre Limited.
(7) Monarch Theatre Limited.
(8) Brighton Theatre Limited.

the shares of which were transferred as of January 1, 1928, to the Holding Company. It is to be noted that these theatres are not the same as those presently held, as appears, *ante*, by reference to Exhibit 6.

Schedule "AA" discloses the interests in the *Park Theatre* and the *Princess Theatre, Preston,* which interests were transferred to the Holding Company. Schedule "B" sets out particulars of the leases of 8 theatre companies operating or controlling 19 theatres as follows:

(1) *Grand, Pembroke.*
(2) *Casino, Pembroke* (closed).
(3) *O'Brien, Renfrew.*
(4) *Casino, Arnprior.*
(5) *Orpheum, Almonte.*
(6) *Princess, Smith's Falls* (closed).
(7) *Weston, Weston.*
(8) *Rideau, Smith's Falls.*
(9) *Star, Carleton Place.*
(10) *Gem, Prescott.*
(11) *Empress, Kemptville.*
(12) *Temple, Wallaceburg.*
 (NOTE.—In Wallaceburg, one T. Martin agreed not to complete his property as a theatre).
(13) *Patricia,* (re-named *Capitol*), *Leamington.*
(14) *Park, Preston.*
(15) *Princess, Preston* (closed).
(16) *Royce, Toronto.*
(17) *Classic, Cobalt.*
(18) *Bijou, Cobalt* (closed).
(19) *Broadway, Haileybury.*

9. HAMILTON UNITED THEATRES LIMITED

This was an Ontario company having a great many shareholders and which, according to the evidence (p. 1237), had merged with Loew's Hamilton Theatre, Limited, and under the merger Mr. Strachan Johnston became a director of Hamilton United Theatres Limited and was so at the time the agreement hereinafter mentioned was entered into. Incidentally, his firm were solicitors for Famous Players Canadian Corporation, Limited, but this was only incidental and had no particular significance.

Under an agreement (Exhibit 29) which will be dealt with more fully hereafter, a new company, which was formed under the name of Radio-Keith-Orpheum Canada, Limited, was to endeavour to arrange, if deemed advantageous, a purchase of the properties of the Hamilton United Theatres or a substantial block of its shares. Radio-Keith-Orpheum Company did not acquire any interest in the Hamilton Theatres, and apparently the matter was dropped for some time.

Subsequently, on February 7, 1930, an agreement was made between Hamilton United Theatres Limited called "The Hamilton Company" and Famous Players Canadian Corporation, Limited, called "Famous Players Company" (Exhibit 105). The Hamilton Company owned the *Capitol Theatre* and *Pantages Theatre* in the city of Hamilton, and the Famous Players Company, through stock ownership in Brighton Theatre, Limited, and Paramount Theatres, Limited, controlled the *Tivoli* and *Savoy Theatres* in Hamilton respectively, and the agreement recites that the parties have agreed that the said four theatres should be operated jointly under the management of Famous Players Company, and the parties agreed as follows.

Famous Players agreed to manage and operate the four theatres for ten years from March 1, 1930, and during such period to book motion pictures and other attractions and entertainments therefor, such as in the opinion of Famous Players should tend to promote the profitable operation of said theatres. The selection of pictures, artists, performances and other forms of entertainment was to be in the sole discretion of Famous Players, and they could from time to time close any one or more of the said theatres and keep same closed as they might consider advisable.

The joint earnings were to be applied in payment of operating expenses as defined and all rentals as set out in the agreement, and the balance divided on the following basis: of the first $210,000 in any year Famous Players is entitled to receive 75 per cent and the Hamilton Company 25 per cent, and profits over this amount are to be divided between the parties in equal shares. Provision was made that if the amount available for distribution in any year was not equal to $210,000, an adjustment should take place the following year when that amount would be earned. Provision was made for a reserve of $25,000.

The books of the Company were to be kept by Famous Players, and they were to be paid a booking fee of $100 per week. Included in the expenses is an item of $56,153 which was to be paid to the Hamilton Company as rental of the *Capitol Theatre* and *Pantages Theatre*. It should be mentioned that Famous Players had been operating these two theatres for Hamilton United for some years previous to the entering into of this agreement. It was further provided that if in the judgment of Famous Players it was advisable to construct any additional theatre or theatres in Hamilton within a radius of three-quarters of a mile from the *Pantages Theatre,* they should be entitled to erect or build such new theatre, in which event the provisions of the agreement should apply to the new theatre for the balance of the ten-year term, there being paid to Famous Players as rent 8 per cent of the cost of the new theatre. Famous Players covenanted that if it should at any time during the continuance of this agreement erect, construct, lease, manage or be otherwise interested in any theatre or theatres not then in existence outside of the three-quarter mile radius, it would not permit the exhibition therein of any motion picture without first exhibiting it in one of the said theatres within the said radius. Famous Players agreed practically to guarantee the rental of $56,153 payable to the Hamilton Company. Famous Players has no stock interest in Hamilton United Theatres Limited.

10. Paramount Publix Corporation

This corporation was organized under the name Famous Players-Lasky Corporation by virtue of the laws of the State of New York on July 19, 1916. In 1927 the name was changed to Paramount Famous Lasky Corporation, and in 1930 to Paramount Publix Corporation. Its principal office is in New York City, with branch offices in the principal cities of the United States and in other countries. It is engaged in the business of producing, distributing and exhibiting for profit motion pictures in the United States and other countries, and owns and operates studios where it makes or produces motion picture films, laboratories for the making of positive prints from the negative films, maintains exchanges for the leasing and distribution of the positive prints, and owns, and/or operates under lease or otherwise a large number of theatres, about 700 in the United States. Adolph Zukor is its president and is now and has been throughout its dominating personality.

This corporation is in virtual control of Famous Players Canadian Corporation Limited by its ownership of 93·786 per cent of the issued shares, and this notwithstanding the voting trust agreement above referred to (Exhibit 115). It also holds seven-eighths of the shares of Canadian Paramount Corporation Limited, which in turn owns or controls 100 per cent of the shares of Famous Lasky Film Service Limited and Regal Films Limited. It is a dominating influence in the motion picture business in Canada, as it controls the companies which dominate the situation here.

11. Other Producers and/or Distributors

CANADIAN EDUCATIONAL FILMS LIMITED.
CANADIAN UNIVERSAL FILM COMPANY LIMITED.
FAMOUS-LASKY FILM SERVICE LIMITED.
FIRST NATIONAL PICTURES INCORPORATED.
FOX FILM CORPORATION LIMITED.
R. K. O. DISTRIBUTING CORPORATION OF CANADA, LIMITED.
COLUMBIA PICTURES OF CANADA, LIMITED.
REGAL FILMS LIMITED.
UNITED ARTISTS CORPORATION, LIMITED.
WARNER BROTHERS PICTURES INCORPORATED.
VITAGRAPH INCORPORATED.

Vitagraph Incorporated is named in the Order in Council. This is a United States company having its head office in New York City, producing pictures under the name Vitaphone and distributing these pictures in Canada through Vitagraph Limited.

First National Pictures Incorporated and Warner Bros. Pictures Incorporated distribute through Vitagraph Limited and have not incorporated in Canada.

Columbia Pictures of Canada Limited.—From page 6184 of the evidence it appears that the shares of this company, or at least a majority of them, are owned by Henry L. Nathanson, General Manager of Regal Films Limited; Herbert Allen, President of Theatre Holding Corporation and an officer of Premier Operating Corporation Limited; L. Rosenfeld, and the wife of Arthur

Cohen, the Managing Director of Famous Players. Louis Rosenfeld is the manager of this company and it holds a franchise from Columbia Pictures Corporation, the United States producing company.

By an agreement (Exhibit 348) dated April 6, 1928, Columbia Pictures of Canada Limited gave to Famous Players for the five succeeding years the right to a first choice of its pictures for exhibition in the Famous Players first run houses in 13 named cities, being Montreal, Ottawa, Toronto, Hamilton, London, Windsor, Regina, Saskatoon, Edmonton, Calgary, Vancouver, Victoria and Winnipeg, at the rentals Famous Players pay to other distributing agencies in the same theatres for the same class or type of picture.

Theatre Holding Corporation Limited has a somewhat similar franchise, but it is to be observed that Famous Players has a 50 per cent interest in Theatre Holding Corporation Limited, and that the first run theatres of Famous Players in the cities named above are not in competition with those of Theatre Holding Corporation, Limited.

With the exception of Vitagraph Incorporated, First National Pictures, Incorporated, and Warner Bros. Pictures Incorporated, the above-named companies are as previously pointed out Canadian companies, wholly or substantially, as the case may be, controlled by the producing companies in the United States whose pictures they respectively distribute. Columbia Pictures of Canada, Limited, is, however, as previously noted, not so controlled, its shares being held in Canada.

12. MOTION PICTURE DISTRIBUTORS AND EXHIBITORS OF CANADA

This company was incorporated (Exhibit 231) by letters patent dated November 12, 1924, issued under the Dominion Companies Act upon the application of John Alexander Cooper, journalist; Arthur Cohen, then Vice-President of Regal Films Limited; Philip Reisman, then Manager of Famous Lasky Film Service Limited; Clair Hague, Manager of Canadian Universal Film Company, Limited; and Louis Bache, then Manager in Canada of First National Pictures, Inc. The company has no share capital. The objects as expressed in the application for incorporation and in the letters patent are:

> " To promote and conserve the common interests of those engaged in the motion picture industry in the Dominion of Canada by establishing and maintaining the highest possible moral and artistic standards in motion picture production, by developing the educational as well as the entertainment value and the general usefulness of the motion picture by diffusing accurate and reliable information with reference to the industry, by reforming abuses relative to the industry, by securing freedom from unjust or unlawful exactions and by other lawful and proper means."

The operations are to be carried on throughout the Dominion of Canada and elsewhere. The head office is at Toronto. It is declared that the business of the corporation shall be carried on without the purposes of gain for its members and that any profits or other accretions to the corporation shall be used in promoting its objects.

Page 3591 of the evidence discloses that Col. Cooper " had been for three or four years Secretary of a motion picture association of a similar character " which was not incorporated but which was performing to some extent at least the functions which have since been performed by this company after incorporation.

MEMBERSHIP

The membership, by article II of the General By-laws, (Evidence, p. 3598) is divided into six classes:

Class 'A'—Distributor members.
Class 'B'—Exhibitor members.
Class 'C'—Producers.
Class 'D'—Individuals nominated by Distributors.
Class 'E'—Individuals nominated by Exhibitors and Producers.
Class 'F'—Other individuals.

On December 29, 1924 (Evidence, p. 3609) some 24 applications were received from various companies, mostly United States producing companies and including Regal Films Limited, for Class A membership. These were elected and asked to name Class D members.

On page 3715 appears a list of Class A members paying dues. These are:

(1) Educational Film Exchanges.
(2) Famous Players Lasky Corporation.
(3) First National Pictures Inc.
(4) Fox Film Corporation.
(5) Universal Pictures Corporation.
(6) Regal Films Limited.
(7) Producers' Distributing Corporation.
(8) Warner Bros.

These names in this list clearly indicate that the association is financed by United States producers, Regal Films Limited apparently being the only Canadian distributor in the list. The association started to function (Evidence, p. 3710) on the first Monday in January, 1925, and the members started to pay weekly dues on January 3 or 4, 1925.

On April 8, 1925, (Evidence, p. 3677; Minute Book, p. 28, item 52) applications were received for Class B (Exhibitor) membership from the following:

(1) Famous Players Canadian Corporation, Limited (five members).
(2) Paramount Theatres Limited (four members).
(3) Allen St. Catharines Theatre, Limited.
(4) Allen London Theatre Limited.
(5) Oakwood Amusement Company Limited.
(6) Hamilton United Theatres Limited.
(7) Palace Theatre Limited (Montreal).
(8) Paramount Brantford Theatres Limited.
(9) Paramount Kitchener Theatre Limited.
(10) Paramount Peterboro Theatres Limited.
(11) Strand Hamilton Theatre, Limited.
(12) Allen's Kingston Theatre, Limited.
(13) Stratford Theatres Co. Limited.

Apparently these were elected though the minutes do not so explicitly state. All of these applicants were and are either the Famous Players Company or subsidiaries or affiliations of theirs.

The following twenty applications for Class E membership were approved on April 8, 1925, and the members declared elected:

(1) J. R. Muir, Capitol, Vancouver.
(2) Ray Harrison, Capitol, St. Catharines.
(3) T. W. Logan, Capitol, London.
(4) H. M. Thomas, Capitol, Winnipeg.
(5) John Hazza, Capitol, Calgary.
(6) John Arthur, Shea's Hippodrome, Toronto.
(7) H. S. Dahn, Capitol, Montreal.
(8) J. Craig, Jr., Oakwood, Toronto.
(9) George Stroud, Capitol, Hamilton.
(10) George Rotsky, Palace, Montreal.
(11) E. Moule, Brant, Brantford.
(12) J. H. Allen, Capitol, Kitchener.
(13) A. G. Crowe, Capitol, Peterboro.
(14) John G. Green, Capitol, Guelph.
(15) H. E. Wilton, Strand, Hamilton.

(16) Leonard Bishop, Regent, Ottawa.
(17) E. C. Smithers, Capitol, Kingston.
(18) J. V. Wend, Classic, Stratford.
(19) C. Robson, Paramount Theatres, Toronto.
(20) E. Landsborough, Regent, Galt.

Each of these Class E members was at the time an employee of Famous Players or its subsidiaries or affiliated companies.

The initial financing of this association was by way of loan of $2,500 from Motion Picture Producers and Distributors of America, commonly called the "Hays Organization," which is the United States pattern on which this Canadian Association (hereinafter referred to as the "Cooper Organization") was patterned and from which it originated, and from which it has derived its inspiration, and with which it has kept in close touch throughout, which collects as will appear later the bulk of its funds (in the 52 weeks ending December 31, 1929, of a total revenue of $27,236.56, New York contributed $21,841.56, the balance $5,160 being collected in Toronto—see Evidence, p 4254), and which in fact dictates its policies and controls its activities.

There is, however, one important difference in that the Hays Organization is frankly an association of producers and distributors, while the Cooper Organization professes or rather professed to have as members, and to act on behalf of, exhibitors as well as distributors. This, however, was a mere subterfuge, as the only exhibiting members were Famous Players and their affiliations and employees, and as Col. Cooper states (Evidence, pp. 4256-7):

> "We did, however, have the name 'Exhibitors' in the chartered name of our Company and so I arranged with Mr. Cohen and Mr. Bragg that we should have twenty of their men in as members nominally, in order that when I went to Ottawa or other places and dealt with the question of censorship, or amusement tax or copyright music or performing rights, I would be able to say that I represented some of the theatre interests.
>
> "Q. That was $480 worth of window dressing, was it?
>
> "A. Correct, sir.
>
> "Q. I see. Perhaps we might cut the whole discussion of that aspect of it short by my asking you if it is true that in substance and in fact this is a distributors' organization?
>
> "A. I think that is correct, sir."

The by-laws provide that the board of directors shall comprise six, to be elected from Class D members (i.e. nominees of Distributor Company members) and two to be nominees of Exhibitor and Producer Company members, two others to be representative of all members and the remaining director, the president, to be appointed by the other directors. Five directors form a quorum. The officers are president, secretary and treasurer.

Thomas J. Bragg of Famous Players was the first auditor and so continued for the first few years. Arthur Cohen of Famous Players was the first secretary. Col. John A. Cooper was the first president and has since continually occupied that office. The first directors were the five provisional directors, viz: Col. Cooper, Mr. Cohen, Mr. Reisman, Mr. Hague and Mr. Bache.

At a meeting of directors on February 19, 1925, Mr. Ira H. Cohen of Fox Film Corporation, Limited, Mr. O. L. Hanson of Canadian Educational Films Limited and Mr. J. W. Berman of United Artists Corporation Limited were present. The minutes are not very clear as to when new directors were elected, but it is quite clear from those listed in the minutes as present at meetings of directors that the directorate was added to and substitutions were made from time to time so that there was a board of from eight to ten members besides the president, who except him were always representative of the distributor agencies in Canada of the United States producers. On April 8, 1925, Mr. Clarence Robson was elected a director "to represent Exhibitors", Mr. Robson being an employee of Famous Players. On July 21, 1925, Mr. M. A. Milligan was elected a director instead of Mr. Reisman. On October 14, 1925, Mr. J. O'Loghlin, representing Fox Film Corporation Limited, replaced Mr. Ira Cohen on the board.

In the first annual report (Evidence, pp. 3715-6) appears this note:

> " *Treasurer's Report:*
>
> "Copy of the Treasurer's report for the year ending December 31, 1925 is attached herewith. The procedure in connection with the collection of fees from distributors whose Head Offices are in the United States is as follows:
>
> "The Motion Picture Producers & Distributors of New York were duly appointed our agents to collect these fees. When collected they are credited to the Canadian Association on the books of the Hays organization. A remittance is made from New York to this office once or twice each month. Other fees from Canadian distributing companies and exhibitor members are collected here and deposited to our own credit. All disbursements are made on the O. K. of the President of the Company. A weekly statement of receipts and disbursements is sent to Mr. J. Homer Platten, the Treasurer of the Hays organization. Monthly and quarterly statements are also made to him. The annual statement properly audited was also submitted to him and its receipt acknowledged on February 1, 1926. By this method all receipts and expenditures are supervised by Mr. Platten in the New York office. Both budgets for 1925-1926 were submitted to the Hays organization through Mr. Platten and approved by them.
>
> "If at any time we should require to make a special assessment on our members the amount of the special assessment would be decided by the Directors here, approved by the Hays organization and collected from our members by Mr. Platten or whoever is treasurer of that organization".

On August 5, 1927, Mr. Arthur Cohen resigned his position as Secretary (Evidence, p. 3977) owing to the provision in the by-laws that no one directly interested in motion pictures can act as Secretary. Col. Cooper was appointed Secretary and has since held that office in addition to the office of President.

FILM BOARDS OF TRADE

Col. Cooper in his annual report for the year 1926 states (Evidence, p. 3717): " Perhaps the most important development of our work during the past year has been the formation of the *Film Boards of Trade.*" These were formed on the suggestion of Mr. Pettijohn, General Counsel for the Hays Organization, made on the occasion of a visit by him to Toronto and Montreal in May, 1925. This report further states:

> " Copies of the minutes of every meeting of the Film Boards Credit Committees and Arbitration Boards is forwarded to this office where these reports are inspected and filed. Where there are any doubts as to the propriety of any action on the part of the Film Boards, these doubts are submitted to Mr. Pettijohn in New York for his advice or decision."

On p. 3752 Col. Cooper says " The Film Boards are absolutely under our control. We admit that". Questioned by me as to whether he really admitted this, he further states: " We direct their work . Mr. Burnett and myself", and further:

> " Q. Who is Mr. Burnett? Oh! in this office?—A. This office, sir."

On p. 3971 appears a quotation, being item 301 of the minutes of a meeting of the Cooper Organization held on May 11, 1927, as follows:

> " Government of Film Boards
>
> "The President submitted a letter which he desired to send out to all film boards explaining how far film boards were autonomous, how far they were responsible to Colonel Cooper as Superintendent of Film Boards in Canada and financially to the General Managers Association. With one or two amendments this circular was approved".

Item 302—from the minutes of the same meeting:

> "The directors re-affirmed the principle that all Film Board Secretaries should be hired and discharged only with the consent and approval of Colonel Cooper. He was also given power to discharge any secretary if he deemed it in the best interests of the Film Boards".

At a meeting on August 31, 1927, Colonel Cooper was appointed Treasurer of the Canadian Film Boards of Trade, with power to open a bank account under that name to sign cheques and to handle all financial matters in connection therewith. (Evidence, p. 3984).

The Film Boards of Trade consist of the local managers of the Exchanges in the Key Cities, and there is one film board for each of these six cities. The Constitution of the Film Boards of Trade and by-laws relating to arbitration and the arbitration clause in the Standard Exhibition Contract, as adopted for Toronto and Montreal Film Boards of Trade, are contained in Exhibit 234 (Evidence, p. 3749). This is, according to Mr. Burnett, (Evidence, p. 3749) practically a reprint of a similar document printed in New York. It provides, Article IV, that the membership shall consist of every person who is now or may at any time be placed in charge of a Film Exchange or a Branch Film Exchange, and that any member absenting himself from any regular or special meeting must furnish in writing reasons for failure to attend, which, if not satisfactory in the judgment of the membership, shall subject the member to a fine. The officers, according to Article III, are a President, Vice-President, Secretary-Treasurer and Executive Secretary-Treasurer. The duties of the Executive Secretary-Treasurer are defined, from which it would appear that he or she is to be the principal executive officer.

ARBITRATION

The bylaws relating to arbitration provide that the Board of Arbitration shall consist of six persons, three of whom shall be members of the Film Board of Trade, called "Distributors' Representatives" and three of whom shall be proprietors or managers of theatres in the zone where the Film Board of Trade is located, called " Exhibitors' Representatives." The three distributors' representatives are to be selected by the members of the Film Board of Trade, to serve for one year, and the three exhibitors' representatives are to be selected by the local Exhibitors' Association. If not so selected, the exhibitors' representatives are to be selected by the President of the Chamber of Commerce, and failing him, the Mayor of the city in which the Film Board of Trade is located; failing such selection, by the President of the Film Board of Trade. So far as the evidence goes, we find no case where the exhibitors' representatives have been appointed otherwise than by the President of the Film Board of Trade except two, one in Toronto and one in the Maritime Provinces.

Article II gives the Board of Arbitration general power to determine disputes and controversies and make findings, and also, in the event of failure of the exhibitor to submit to arbitration or to comply with the award, or in the event the distributor has been found to have committed such a breach of contract as in the opinion of the Board justifies members in requiring security in future dealings with the exhibitor to fix the amount (not exceeding that specified in Article XIX of the uniform Exhibition Contract, hereinafter termed "the Arbitration Clause") that each distributor may demand as security pursuant to said Arbitration Clause. The amount fixed by the arbitration clause is a sum not exceeding $500 and not less than $100 for each existing contract.

As a means of persuading members to use only the uniform exhibition contract as it was then called, it is provided that the Board of Arbitration shall not be obliged to entertain any claim unless same arises under a contract substantially in accord with the uniform Exhibition Contract.

Article IV provides for enforcement of decisions of the Board of Arbitration. The Board is required to notify the Secretary of the Film Board of Trade in writing of the names of any members, and the names and addresses of any exhibitors who have been found by the Board of Arbitration: (1) to have refused to submit to arbitration a controversy arising under a contract containing the arbitration clause, or (2) to refuse to comply with the decision of the Board of Arbitration, or (3) to have committed such a breach of contract as in the opinion of the Board of Arbitration justifies the exhibitor in refusing to deal with the member or justifies members in requiring security in future dealing with the exhibitor; and, in cases where the exhibitor is the party at fault, of the maximum amount (not exceeding that specified in the arbitration clause) which each distributor may demand as security pursuant to the arbitration clause.

Upon receipt of such information the Secretary of the Film Board of Trade is required to advise all members of the names and addresses of all exhibitors who shall have been found by the Board of Arbitration to have done any of the things specified above and of the sum which the arbitration board has fixed as the maximum which distributors may demand as security of the exhibitor. Upon receipt of such notice each member having a contract, or representing a distributor who has a contract, with the exhibitor named in the notice *"shall"* demand payment by the exhibitor of such sum, not exceding the maximum as in the judgment of such member or distributor shall be sufficient to protect him or it in the performance of such contract by the exhibitor; and upon failure to pay the amount of the security the member shall proceed either (a) to terminate the contract with the exhibitor, or (b) to suspend service until such exhibitor shall have furnished such security or complied with the decision of the Arbitration Board. It also provides that if members refuse to comply with the decisions of the Board, they shall not have the right to redress from the Board upon any claim against any exhibitor until such member has submitted to arbitration or has complied with the decision of the Arbitration Board.

The Arbitration Clause referred to is of considerable length. It provides shortly that each party to the contract will submit to a board of arbitration all claims and controversies arising under the contract, and they further agree to abide by and forthwith comply with any decision and award of the Board of Arbitration, and that the same shall be enforceable in and by any court of competent jurisdiction. If the exhibitor fails or refuses to consent to submit to arbitration any claim arising under this contract, or any other film service contract providing for arbitration, or to abide by and forthwith comply with any decision of a board, or where a board states that security may be required, the distributor may demand as security for the performance by the exhibitor of the contract in question and of all other existing contracts, payment by the exhibitor of an additional sum not exceeding $500 and not less than $100 under each existing contract to be retained by the distributor until the complete performance of all such contracts, and then applied at the option of the distributor against any sums finally due, or against any damages determined by said board of arbitration to be due to the distributor, the balance if any to be returned to the exhibitor, and in the event of the exhibitor's failure to pay such additional sum within seven days after demand, the distributor may at his option, by written notice to the exhibitor, suspend service until said sum shall be paid and/or terminate the contract.

These bylaws and rules were revised up to June, 1926 (Exhibit 247), the principal alteration being that two alternate distributors' representatives and two alternate exhibitors' representatives were to be appointed to act. It further provides that in case a controversy is decided in favour of an exhibitor, the Board of Arbitration may include in its award the sum to be paid by the distributor to the exhibitor, not to exceed the cost to the exhibitor of all railroad transportation from and return to the city or town in which the exhibitor's theatre is located, and an additional sum not to exceed $10 if the exhibitor has attended the hearing. A reference is made to the "Standard Exhibition Contract," which apparently at this time had been adopted fairly generally by the distributors.

Practically the same provisions are provided for enforcement of decisions of the Board, including the payment of the deposits above referred to, and these rules and regulations also for the first time provide for the establishing and operations of the Credit Committee, which rules and regulations are embodied in the exhibit and which provide that where a theatre is sold the members who have negotiated the sale shall promptly report the same to the secretary of the Credit Committee, who shall list the sale and furnish copies of this list to the appropriate Film Board of Trade. The list is designated "Credit Information List." Upon receipt of such list each member shall deliver to the secretary a statement of his existing contracts at each theatre listed and also a statement, if known, whether or not the exhibitor provided, as a condition of the sale, for the assumption and complete performance by the new owner of the contracts listed and if the new owner has agreed to such condition.

Rule IV provides that the Secretary shall request the new owner to furnish to the Credit Committee within five days such information and references to enable the credit committee to intelligently report to the members on the credit standing of such new owner. A form of questionnaire was adopted.

Rule VI provides that if the new owner refuses or fails to furnish the information and references, the credit committee shall indicate such fact upon the credit information list by the letters "C. I. R.," meaning "credit information refused." Where the credit committee concludes upon information received that the transfer was made for the purpose of avoiding or being relieved of incomplete contracts for pictures, such conclusion is indicated in the list by the letters "F. T." Where the new owner does not care to assume and complete all existing contracts entered into by the prior owner, the credit committee shall indicate on the credit information list under the heading "cash security," the amount of cash security not to exceed $1,000 as a reasonable sum which members shall require to be deposited as security for the full and complete performance for each contract thereafter made.

Rule VII provides that no member shall enter into a contract or contracts for the exhibition of pictures at any theatre listed in the credit information list for a period of ten days from the date of the first appearance of such theatre upon such list, nor thereafter unless the new owner shall have paid in cash to such member the amount of security specified as above. This does not prohibit spot booking during the said ten day period.

Rule VIII provides for the removal of the theatre from the credit information list upon satisfactory evidence of credit of the new owner.

The Credit Committee have also the right under Rule IX to examine the books and records of members in respect only to an exhibitor who has sold or transferred his theatre and has failed to provide for the assumption by the new owner of existing incomplete contracts.

Rule X provides for the suspension or expulsion of members who violate any of these rules or who fail to report any sale of which they have knowledge.

The arbitration clause remains very much as formerly. The constitution of the Film Boards of Trade remains practically as in Exhibit 234, there being, however, some alterations in the rules of arbitration to comply with changes in the form of standard exhibition contract. The Credit Committee rules have been revised to February 1, 1927 (see Exhibit 248) but are in the main substantially as set out in Exhibit 247. A further set of credit committee rules has been adopted, but, as I am informed, has not yet been put in force in all centres, I imagine because of the legal proceedings in the United States as to the legality of the Credit Committee.

The rules of arbitration were first adopted January 1, 1927, and, as will be seen by a reference to Exhibit 242, are practically a reprint of the United States rules and regulations, in fact Exhibit 242 seems to have been, as appears on its face, printed in New York. In June, 1928, these rules were revised (Exhibit 243) and contain very similar provisions to those in Exhibit 247, including the provisions for enforcement of decisions, the chief differences being in Section 9, Rule II, which provides that members of the Film Board of Trade shall not be entitled to the benefit of Rule IV, being the rule providing for enforcements of decisions of the Boards of Arbitration, unless the decision or award of the board determines a claim arising out of a contract which contains or incorporates by reference all of the principal articles of the Standard Exhibition Contract filed with the Motion Picture Distributors and Exhibitors of Canada, identified by the signature of its President on March 31, 1926, or a contract bearing date prior to April 1, 1926, which is substantially in accord with the uniform Exhibition Contract, or a contract which contains or incorporates by reference all the principal articles of the Standard Exhibition Contract filed on June 1, 1928, with the Motion Picture Distributors and Exhibitors of Canada. These dates have some significance and will be referred to in dealing with the developments of the Standard Exhibition Contract.

As will appear later, the Standard Exhibition Contract was revised as of May 15, 1930, and the rules were then amended to comply with the amendments to the contract and, as amended, are set out in Exhibit 244, the chief alteration being that the provisions for enforcement of the contract by requireing deposits to be made are omitted, and provision is made for the payment of fees of the arbitrator by the unsuccessful party.

It is also provided that the Board of Arbitration shall not entertain a submission with respect to any claim unless the same arises out of a contract which contains or incorporates by reference all of the principal articles of the "Canadian Exhibition Contract" filed with the Motion Picture Distributors and Exhibitors of Canada bearing date May 15, 1930, and identified by the signature of its President, except with the written consent of both parties to such claim.

IV. FAMOUS PLAYERS ACQUISITIONS OF THEATRES AND/OR INTERESTS IN SAME

(A) ORIGINAL CHAIN

It has already appeared, page 18 of this report, that Famous Players commenced business with thirteen theatres. These were acquired under agreement February 5, 1920, as follows, (Exhibit 124):

(1) *Regent,* Toronto	By purchase of shares of Canadian Paramount Corporation in Regent Theatres Limited.
(2) *Strand,* Toronto	By purchase of shares of Canadian Paramount Corporation Limited in Strand Theatre Co. Limited.
(3) *Teck,* Toronto	By purchase from Famous Players Lasky Corporation of all the shares of Paramount Theatres Limited owned by Canadian Paramount Corporation Limited.
(4) *Family,* Toronto	
(5) *King George,* Toronto	
(6) *Alhambra,* Toronto	
(7) *Garden,* Toronto	
(8) *Strand,* Kingston (now the *Tivoli*)	
(9) *Strand,* Ottawa	
(10) *Regent,* Guelph	
(11) *Regent,* Galt	
(12) *Dominion,* Vancouver	By a similar purchase of the shares of Dominion Theatres (Vancouver) Limited.
(13) *Dominion,* Victoria	By a similar purchase of the shares of Victoria Dominion Theatres Limited.

On February 26, 1920, the company took over from Mr. Nathanson an agreement to purchase land on the corner of Danforth and Pape Avenues, *Toronto,* on which was subsequently erected the *Palace Theatre* now owned and operated by Famous Players. (Minutes, p. 45, Evidence, p. 32).

At the same time an agreement to purchase land in *Sault Ste. Marie* was taken over. The *Algoma Theatre,* owned and operated by Famous Players, was afterwards erected on this land and opened in 1929.

Property on Seymour and Granville Streets in *Vancouver* was acquired from Canadian Paramount Corporation, Limited under the agreement of February 5, 1920. The *Capitol Theatre* was subsequently erected on this land.

There was similarly acquired, land in *Winnipeg* on which the Company erected the *Capitol Theatre,* (Evidence, p. 33).

Early in 1920, properties on Sparks Street and Queen Street in Ottawa were acquired but no theatre has been erected on them. They are still held.

Paramount Theatres Limited, incorporated June 26, 1918, was and still is an operating company, of which all of the shares were acquired by Famous Players under the agreement of February 5, 1920. (Evidence pp. 18 and 1263.)

By an agreement dated February 26, 1920 (Evidence p. 39), Paramount Theatres Limited acquired 100 per cent of the shares of the common stock of Paramount Oshawa Theatres Limited, but turned over 50 per cent of this to the underwriters for distribution with the preferred shares sold to the public. Shares have since been acquired so that now Paramount Theatres Limited owns 51·75 per cent of the common shares and Famous Players owns 31·34 per cent of the common shares, which, subject to the rights of preferred shareholders on default of payment of dividends, gives Famous Players and its 100 per cent owned subsidiary control of Paramount Oshawa Theatres Limited. This company owns the *Regent Theatre, Oshawa,* Ontario, and is operated under an agreement (Exhibit 4) by Paramount Theatres Limited, which gives that company control of the management of the theatre and the selecting and booking of pictures for a period of twenty years. For this agreement to manage and book, Paramount Theatres Limited obtained $249,875 of common shares at par, about half of which was given to the underwriters for the purpose of bonusing the preferred shares (Evidence, p. 46). It is expressly provided that Paramount Theatres Limited "in no way guarantee the results of operating the said theatre or that the same will be profitable," nor is it "to become responsible . . . . in regard to the finances or liabilities of the theatre or the Theatre Company in any way."

(B) British Columbia

1. *B.C. Paramount Theatres Limited*

Upon the organization of Famous Players, and practically contemporaneously therewith, they incorporated under the British Columbia Companies Act a company called "B.C. Paramount Theatres Limited." The head office was at Vancouver, and the objects were:

(*a*) To take over the leases and equipment of: (a) *The Dominion Theatre,* Vancouver, (b) *The Dominion Theatre,* Victoria, (c) *The Dominion Theatre,* Nanaimo, and (d) *The Rex Theatre,* Revelstoke (this theatre was later disposed of), and certain shares, being 74·43 per cent of the issued capital of the Broadway Theatre Limited, operating the *Broadway Theatre,* Vancouver.

(*b*) To carry on the business in British Columbia and elsewhere of theatre proprietors, etc., also a large number of incidental and ancillary objects with power to carry them out.

The capital was $300,000, being 3,000 shares of $100, all issued and all presently held by Famous Players. This company is the principal subsidiary of Famous Players in British Columbia.

These four theatres were acquired under a basic agreement (Exhibit 218) dated November 28, 1919, between United Theatres Limited (Head Office, Vancouver, B.C), Dominion Theatre Company, Limited, and Victoria Dominion Theatre Company, Limited, and Western Theatre Company, Limited.

The two Dominion companies owned 50 per cent of the shares of the United Company and the Western Company owned the other 50 per cent; and the United Company had a leasehold interest in the four above-named theatres. By the agreement the interest of United Theatres in the theatres was to be transferred and assigned to one of the Dominion companies or to a new company to be formed. The United Theatres Limited passed into the control of the Western Company and Famous Players never acquired any interest in it. This company must be distinguished from the company mentioned on page 22 of this report, called "United Theatres Limited," incorporated in Ontario with head office at Sarnia.

Under agreement dated December, 1919 (Exhibit 219), the Dominion Theatre Company Limited and Victoria Dominion Theatre Company, Limited, transferred to B. C. Paramount Theatres Limited the leases and equipment of the said four theatres and 110 shares of the capital stock of Broadway Theatre Limited, in consideration for which 3,000 shares, being the whole of the company's capital stock, were issued to the two Dominion companies. These companies have since passed out of business (Evidence, p. 3180).

The present Directors of B. C. Paramount Theatres Limited are:

A. H. Douglas, President.
T. J. Bragg, Vice-President.
J. R. Muir, Managing-Director and Secretary.
J. P. Bickell.
A. B. Robertson.

Mr. Muir is the chief executive of Famous Players located in British Columbia. This company controls eleven theatres, all in British Columbia.

(1) *The Dominion, Vancouver.*
(2) *The Dominion, Victoria.*
(3) *Capitol, Prince Rupert.*

Leased in 1928 from the Prince Rupert Amusement Company Limited. The lease is Exhibit 25, dated October 22, 1925. The term is 15 years. The rent is $8,000 per year and one-half of the profits. By agreement (Exhibit 23), dated March 21, 1929, B. C. Paramount Theatres Limited purchased from one Stewart P. McMordie, lessor of the *Westholme Theatre,* the only other theatre in Prince Rupert, the furnishings and equipment of that theatre for $15,000, of which $6,000 was payable as rent. McMordie agreed to close the theatre and not to permit any business to be carried on on the premises and to exclude the public from the building for one year from March 31, 1929. An agreement (Exhibit 24) of May 3, 1929, between Prince Rupert Amusement Company Limited, called "the Lessor" and B.C. Paramount Theatres Limited, called "the Lessee" recites an agreement by the Amusement Company to install an organ in the Capitol Theatre and that S. P. McMordie is the lessee of Westholme Theatre in Prince Rupert, and the Lessor and the Lessee have agreed that it will be to their joint advantage if the competition of such theatre can be eliminated, and to that end that the lessee purchase from McMordie all the furnishings of the Westholme for $15,000 in consideration of his not operating the said theatre. It also recites the agreement of March 21, 1929 (Exhibit 23): The lessor agreed to pay $4,500 of the amount payable to McMordie and the Lessors' obligation in regard to contributing to the cost of an organ for the Capitol is reduced from $8,000 to $3,500. Since March 31, 1929, the only operating theatre in Prince Rupert has been the Capitol and the competition has been eliminated as contemplated.

(4) *The Bijou, Nanaimo.*
(5) *The Opera House, Nanaimo.*
(6) *The Capitol, Nanaimo.*

These theatres, including the *Capitol,* formerly the *Dominion,* in Nanaimo, were pooled and since July 10, 1926, have been operated jointly with W. P. Dewees Limited, under an agreement of that date (Exhibit 7-A) between B.C. Paramount Theatres Limited, called "The Paramount Company," Famous Players Canadian Corporation Limited and Willis Perry Dewees, called "Dewees." Dewees is the person mentioned in Exhibit 218.

The agreement recites that the Paramount Company is the lessee in possession of the Dominion Theatre, Nanaimo, the existing lease having been extended for five years from January 1, 1927, and that he controls by share ownership W. P. Dewees Limited, the lessee in possession of the Bijou Theatre, Nanaimo, the lease expiring January 1, 1929, and that he controls by share ownership First National Exhibitors Exchange Limited, the lessee in possession of the Opera House, Nanaimo, the lease expiring July 1, 1929.

It also recites that by an agreement of April 15, 1924, between the Paramount Company and Dewees, arrangements were made to keep the said Opera House closed, each party paying $25 per week towards payment of the rent and other outgoings and expenses in connection therewith, and that Famous Players controls the Paramount Company by share ownership.

The agreement provides that the interests of the Paramount Company and Dewees as operators of moving picture theatres in Nanaimo shall henceforth be pooled, and that the present leases and renewals thereof of the Dominion and Bijou Theatres and the Opera House shall henceforth be held for the equal and joint benefit of the Paramount Company and Dewees.

It also provides that " no party hereto shall become interested . . . . in any other theatrical, vaudeville or moving picture enterprise in Nanaimo," and further " It is the intention that henceforth, so far as regards theatrical operations in the City of Nanaimo, the Paramount Company and Dewees shall cease to be in competition." The agreement is to terminate on December 31, 1931, and each party covenants with the other (Dewees also covenanting with Famous Players) not to take any lease of the theatre or theatres of which the other is the lessee. The Dominion Theatre is to be operated and the Bijou closed as from July 10, 1926, and the Opera House is to continue to be closed. The Paramount Company is to operate and manage the Dominion Theatre. Any new theatre in Nanaimo in which any of the parties to the agreement becomes interested is to be subject to the agreement and operated as provided therein. The agreement of April 15, 1924, relative to the closing of the *Opera House* is terminated.

A supplemental agreement of April, 1928, with the same three parties and in addition Amalgamated Theatre Company Limited and W. P. Dewees Limited recites a lease dated March 13, 1928, from Frank L. and Ethel Inez Reynolds to the Amalgamated Company of the Bijou Theatre for 10 years from January 1, 1929, and an option to purchase at $30,000, and Dewees controls by share ownership the Amalgamated Company. The agreement provides that this theatre shall for all purposes remain subject to the provisions of the principal agreement as if this new lease had been taken in the name of Dewees.

No theatre other than the *Dominion* (the name of which has been changed to the *"Capitol"*) and the Bijou which was closed for a year and now runs silent pictures has been operated in Nanaimo since this agreement came into force, and competition there has been thus effectively eliminated.

(7) *Starland and Gem, Nelson, B.C.*

(8) *Capitol, Nelson, B.C.*

An agreement of August 1, 1924, between B. C. Paramount Theatres Limited (called " the Paramount Company"), W. P. Dewees Limited, Famous Players Canadian Corporation Limited (called "the Famous Company"), and Willis Perry Dewees (called "Dewees") recites:

(*a*) that the Paramount Company and W. P. Dewees Limited are joint lessees of the Starland and Gem Theatres in Nelson under a lease dated August 1, 1924, and
(*b*) that Famous Company controls by share ownership the Paramount Company and Dewees similarly controls W. P. Dewees Limited.

The agreement provides that:

(*a*) The operations of the Gem and Starland Theatres shall be pooled for the joint and equal benefit of the Paramount Company and W. P. Dewees Limited.
(*b*) Until otherwise agreed upon the Starland alone shall be operated and the Gem closed forthwith and only operated as agreed on.
(*c*) The Starland shall be operated by the Paramount Company.
(*d*) If a new theatre shall be built at Nelson by or on behalf of any party hereto or of any Company controlled by Dewees or Famous Players, such new theatre is to be brought into this pooling arrrangement and the new theatre operated instead of the Starland on the terms provided for the operation of the Starland.

By an agreement (Exhibit 21) dated December 2, 1927, Marie Papazian, the lessor of the Starland Theatre to B. C. Paramount Theatres Limited and W. P. Dewees Limited, she being also in control of the lease of the Gem Theatre, agrees with B. C. Paramount Theatres Limited and W. P. Dewees Limited that the Gem theatre will not be used, operated or conducted as a motion picture theatre or for theatre purposes for five years from April 1, 1928, that she will forthwith alter the premises so as to render them unfit for such purpose, and remove opera chairs, projection machine and fittings, the screen and stage setting, and will not during said five years install a motion picture machine therein. The agreement came into effect on August 11, 1924, and the Gem Theatre was closed. It was subsequently turned into shops and has not since been operated as a theatre. The lease of the Starland from Marie Papazian is also dated December 2, 1927, and is Exhibit 22.

An agreement (Exhibit 9-B.) dated April 27, 1927, between the parties to the agreement of August 1, 1924 (Exhibit 9-A) recites that agreement as the "principal agreement," and also an agreement dated April 5, 1927, whereby the Paramount Company and W. P. Dewees Limited agreed with one Alfred Harold Green for the building by Green of a theatre in Nelson and for the lease by Green to them of the theatre upon completion. The agreement provides that as soon as the Paramount Company and W. P. Dewees Limited shall have entered into possession of the new theatre the Starland and Gem shall be closed, and that the present leases of the Starland and Gem Theatres shall not be renewed, unless both companies otherwise agree. It also provides that the new theatre shall be operated for the joint and equal benefit of the Paramount Company and W. P. Dewees Limited under the provisions of the principal agreement relative to the Starland. Green completed the theatre, called it "Capitol" and by lease dated August 10, 1927 (Exhibit 8), leased it to B. C. Paramount Theatres Limited and W. P. Dewees Limited for 15 years from August 15, 1927, with an extension in case certain alterations or additions are made.

The Paramount Company and W. P. Dewees Limited entered into possession, have since operated the Capitol under the joint arrangement, and the Starland has since remained closed except for 7 days between September 10 and October 1, 1927 (see Exhibit 225). The Capitol has thus been, since August, 1927, without competition in Nelson, a town of over 5,000 population.

(9) *Capitol, Victoria, B.C.*

(10) *Royal Victoria, Victoria, B.C.*

The *Capitol* was acquired by Paramount Victoria Theatres Limited April 23, 1921, a company with head office in Victoria, B.C., of which Famous Players holds 58·33 per cent of its stock. The theatre is leased to B.C. Paramount Theatres Limited.

The *Royal Victoria*—Control of this theatre acquired by a pooling agreement (Exhibit 10-A) dated June 4, 1924, between B.C. Paramount Theatres Limited, Willis Perry Dewees, (referred to as "Dewees") and United Theatres Limited (referred to as "United Company"). It recites that B.C. Paramount is the lessee and operator of Dominion Theatre, Victoria, that Dewees controls the United Company, the lessee of Royal Victoria Theatre under a lease to it dated August 1, 1923, from Victoria Opera House Company, Limited for five years from August 1, 1923; and that the Capitol Theatre, Victoria, is owned by Paramount Victoria Theatres Limited (called "the Paramount Company").

The agreement provides that:

(*a*) the operation of the Capitol shall be under the management and supervision of Dewees, who is also to do the booking of First National Pictures and in respect to the booking of other pictures, he is to submit all proposed bookings and prices to B.C. Paramount Theatres Limited.

(*b*) The present prices of admission shall not be changed without the approval of the lessee.

(*c*) The operation of the Royal Victoria shall be under the management and supervision of Dewees.

(*d*) The Royal Victoria shall not be used for moving pictures or vaudeville but only for such other entertainment as shall be agreed upon.

(*e*) Any profit or loss from the operation of the Royal Victoria shall be credited or charged—60 per cent against the operation of the Capitol and 40 per cent against the operation of the Dominion Theatre, Victoria.

(*f*) After a surplus of $5,000 has been accumulated and maintained as a contingent fund, 50 per cent of the net profits shall be paid to the United Company as and by way of consideration for the discontinuance of the Royal Victoria Theatre as a moving picture and vaudeville theatre and the other 50 per cent shall be paid to the B.C. Paramount.

(*g*) The Lessee agrees with Dewees and the United Company that it will not directly or indirectly lease or purchase or negotiate for the leasing or purchasing of the Royal Victoria Theatre, and the United Company and Dewees agree each for itself and himself that they will not directly or indirectly lease or purchase or negotiate for the leasing or purchasing of the Capitol or Dominion Theatres, Vancouver.

(*h*) The United Company agrees with the Lessee not to assign, sublet, release or otherwise deal with its lease of the Royal Victoria Theatre, without the written consent of the Lessee, and the Lessee agrees with Dewees and the United Company not to assign, sublet, release or otherwise deal with its lease of the Capitol Theatre without their written consent.

An agreement (Exhibit 10-B) dated April, 1928, between B. C. Paramount Theatres Limited (referred to as the "Paramount Company"), Willis Perry Dewees (referred to as "Dewees"), The United Theatres Limited (referred to as the "United Company"), Amalgamated Theatre Company Limited (referred to as "The Amalgamated Company"), and W. P. Dewees Limited (referred to as the "Dewees Company"), refers to the agreement of June 4, 1924 (Exhibit 10-A) as the "principal agreement" and recites a lease of the Royal Victoria Theatre from the Bank of Montreal to the Amalgamated Company for ten years from August 1, 1928, and provides that said theatre shall remain subject to the terms of the principal agreement to the same extent as if the lease had been renewed in the name of the United Company.

A further agreement (Exhibit 10-C) dated November 20, 1928, between Famous Players Canadian Corporation Limited, W. P. Dewees Limited, and Royal Victoria Theatre Company Limited, refers to the lease of the Royal Victoria Theatre to the Amalgamated Company, and recites that W. P. Dewees Limited had purchased the Bank of Montreal's reversion in the premises, and that Famous Players and the Dewees Company had agreed Famous Players should acquire a one-half interest therein. It provides that premises shall be transferred to Royal Victoria Theatre Company Limited as of August 1, 1928, and that Famous Players and the Dewees Company shall from time to time subscribe and pay for stock of the Theatre Company in equal amounts sufficient to meet annual mortgage requirements.

The Royal Victoria Theatre was maintained closed from June 4, 1924, till September 15, 1924. Since then it has been rented on an average of about twenty times yearly for legitimate road shows, other purposes, and for exhibition of motion pictures five times in all (Exhibit 225). It has shown a loss running "into several thousands of dollars per year" (Evidence, pp. 106-107). Seventy per cent of the loss is borne by Famous Players, and that company charges 40 per cent against the operations of the Dominion Victoria Theatre (Evidence, p. 105).

(11) *Broadway Theatre, Vancouver.*

This theatre was acquired concurrently with incorporation of B.C. Paramount Theatres Limited by acquisition of shares of Broadway Theatre Limited, and has since been operated.

It is to be noted that the *Rex* at Revelstoke and *Gem* at Nelson are no longer part of the chain.

2. *Vancouver*—Strand Theatre

Allen's Vancouver Theatre Limited in October, 1923, owned, and still owns, the Strand Theatre. By an agreement (Exhibit 12) dated October, 1923, Famous Players agreed to sell to W. P. Dewees and John A. Schuberg, a partner of Dewees, 2,716 shares of Allen's Vancouver Theatre Limited, then the subject of an action in which G. T. Clarkson, liquidator of the Allen Companies, was plaintiff, claiming the right to these shares which he had agreed to sell, if recovered, to Famous Players. Mr. Clarkson recovered the shares and they were delivered to Famous Players and in turn by them to Dewees and Schuberg's nominee, a company called "Associated Investment Company, Limited," which company in June, 1924, was the lessee and operator of the Strand Theatre under lease dated October 23, 1923.

An agreement (Exhibit 13) dated June 4, 1924, between Famous Players Canadian Corporation Limited, Willis Perry Dewees, W. P. Dewees Limited, and Eclipse Investment Company, recites that

(*a*) Allen's Vancouver Theatre Limited is the owner of the Strand which is leased to and operated by the Associated Investment Company, Limited.

(*b*) The Associated Company is the owner of a large number of shares of the Allen Company, as is also D & S Investments Limited, all subject to certain payments of purchase money.

(*c*) The capital of the Associated Company is 400 shares of $100 each, held by:

	Shares
W. P. Dewees	1
Eclipse Investment Co. Ltd.	199
J. A. Schuberg	1
Mrs. N. C. Schuberg	199
	400

(*d*) The capital of the D & S Company is 52 shares of $100 each held by:

	Shares
W. P. Dewees	1
W. P. Dewees Limited	25
J. A. Schuberg	1
Mrs. N. C. Schuberg	25
	52

(*e*) Dewees has invited Famous Players to purchase the shares of Schuberg and Mrs. Schuberg in the Associated Company and the D & S Company, so that Dewees (or the Eclipse Investment Company, Limited, and W. P. Dewees Limited, holding companies for Dewees) and Famous Players shall jointly and equally control the operation of the Strand Theatre and the ownership of the said shares of the Allen Company.

The agreement makes certain provisions for the carrying on the affairs of the Allen Company, the Associated Company and the D & S Investments Co. Limited, and in the result Famous Players and Dewees have a controlling interest 62·52 per cent in Allen's Vancouver Theatre Limited, the earnings of which are distributed as set out in the graphic chart (Exhibit 20). See also Exhibit 6, p. 6, and Evidence, p. 160.

The Strand Theatre deal was the first association between Famous Players and Dewees.

3. *Langer Chain in Vancouver*

This chain consists of six third run theatres in Vancouver, viz:

Alma
Grandview
Kerrisdale
Regent
Victoria
Windsor

Famous Players acquired control of these theatres by virtue of a lease (Exhibit 113) dated January 31, 1927, from one Joseph Francis Langer, the owner of the theatres, for ten years from February 21, 1927, with a right of renewal for a further term of ten years.

The correspondence, Exhibit 148 (217 letters and telegrams) in reference to Langer is largely between J. R. Muir and N. L. Nathanson, then Managing Director of Famous Players, and is quite interesting. For example, in a letter of August 23, 1926, Mr. Nathanson wrote to Mr. Muir in part as follows:

> "I am still concerned about the Langer situation. However, no doubt he will make a substantial investment in the Orpheum Theatre and that might keep him from going any further. It is a situation that should never have been permitted to happen and never would have happened any place in the East."

On September 13, 1926, Mr. Nathanson writes Mr. Muir:

> "Perhaps there may be some way of bringing Langer around so he will do business with us and that would be preferable to building another threatre in opposition. If, however, we cannot get together with him and he should build in Nanaimo or Nelson or some other place, it would not make a great deal of difference, because we would have to stop him sooner or later . . . . You must realize that my main reason for building in opposition to the Grandview is that I think it is the only profitable theatre he will have and once he realizes what our opposition means he will be more willing to work with us."

On January 18, 1927, Mr. Langer wired Mr. Nathanson in part as follows:

> "In view of threats by Thomas to build opposition theatre in Grandview . . . . in view of above facts I exceedingly regret that I cannot enter into any group arrangement with your Corporation than purchase outright . . . ."

On January 19, 1927, Mr. Thomas, who was Mr. Nathanson's personal representative, wired him:

> "After all day session at seven p.m. closed with Langer . . . . This means we get six brand new theatres fully equipped at a weekly rental one sixty each . . . . This has been a tough battle but we get six fully equipped theatres for no cash."

On January 19, 1927, Mr. Nathanson wired Mr. Thomas congratulating him on closing the deal with Langer, and saying in part:

> "This is a good job regardless of whether the theatres are profitable or not, as Langer situation was not a good one for us."

On February 1, 1927, Mr. Nathanson wired Mr. Thomas in part:

> "If you think it advisable to buy pictures on 15 per cent basis for suburban circuit, do so. Use your own judgment. What we want to do is to cut Langer film rental at least one-third."

On February 12, 1927, Mr. Thomas wired Mr. Nathanson in part:

> "It was only the pressure that Milliman brought on him (Langer) about future that made him take any interest in our proposition at all."

Mr. Milliman was General Manager of the Langer Circuit.

The correspondence indicates that Mr. Nathanson thought that the price paid for the lease of the Langer theatres was too high, but, notwithstanding this, finally closed the deal with Langer in Toronto on February 19, 1927, as indicated by his telegram to Thomas on that date. Mr. Bragg's evidence, page 2007, states:

> "Instead of bringing a profit of $25,000 per year (as prophesied by Thomas) the first year we operated that circuit we lost $5,163 and the second year, which was the first year of sound and the best theatre year, out of the six houses we made $2,600. The third year we lost $25,679.18, i.e. the year ending August 30, 1930, the total loss up to that time being $28,196.70."

The real object in making the deal appears to have been to get rid of the competition from Langer's theatres.

Mr. Langer, at the negotiations for the lease of the said six theatres, spoke about building a theatre to be called "the Orpheum," and in this connection on January 7, 1927, Mr. Nathanson wired Mr. Thomas in part:

> "Don't worry, Thomas, we will take care of the Orpheum when we are ready. They had better be content to let things alone or they will find themselves in situation that will not be very pleasant."

4. *Vancouver*—Fraser Theatre

This theatre is held by Fraser Theatre Company, Limited, a Company with head office in Vancouver and an issued capital stock of 100 shares of $1 each. It holds under lease the *Fraser Theatre* from one Young. It is a third run theatre in the City of Vancouver. Fifty per cent of the issued stock of the company is held by Famous Players.

An agreement dated January 15, 1927, between Abraham Young and B. C. Paramount Theatres Limited (called "the Company") and Fraser Theatre Company Limited (called "the Fraser Company"), contains this recital:

> "And whereas the Company owns and/or operates many theatres throughout British Columbia and would be able to obtain better pictures at lower rentals for said theatres than Young could do if operating independently."
> (Evidence, p. 3363.)

The agreement contemplates the formation of a company to be called "Fraser Theatre Company Limited" and Young and his nominees agreed to subscribe for 50 shares, and B.C. Paramount Theatres Limited for 50 shares, and that the Fraser Theatre shall be leased to the Fraser Company and shall be operated in its name from January 17, 1927, under the management and general supervision of B. C. Paramount. Young is to act as manager and B. C. Paramount is to do the booking for $25 a week. It further provides that Young shall have no authority and agrees not to make any purchase of plant or equipment exceeding $10 per week except at the written approval of the B. C. Paramount Company. By a further agreement dated February 25, 1927 (Evidence, p. 3367) "Famous Players" is substituted for "B. C. Paramount Theatres Limited" as if Famous Players had been originally a party to the agreement. The lease is dated January 15, 1927, (Evidence, p. 3367) and is for 5 years from January 17, 1927, with the right of renewal for a further term of 5 years. Famous Players acquired a 50 per cent interest in the profits, and controlled the operation of and booking for this theatre.

5. *New Westminster*—Columbia Theatre

On page 179 of the minute book of Famous Players, reference is made to an agreement dated January, 1927, between Columbia Investment Company of New Westminster and Famous Players, with reference to the erection of a theatre by the Columbia Investment Company in New Westminster, and the draft of a proposed lease to be taken by Famous Players upon completion of the said theatre was submitted to the directors. (Evidence, p. 194.)

In Exhibit 148 appears a telegram from Mr. Thomas to Mr. Nathanson, which shows that the New Westminster deal was closed on January 6, 1927. The Columbia Theatre, New Westminster, is one of those listed on page 12 of Exhibit 6 as one of the leasehold theatres presently operated by Famous Players. The theatre has a seating capacity of 912. New Westminster has a population of about 20,000 and there is one other theatre there with a seating capacity of 855, the provincial licence of which is issued to one F. L. Kerr.

6. *Berry Chain of Theatres*

This chain consists of:

The *Kitsilano Theatre,* Vancouver.
The *Empress Theatre,* Vernon.
The *Capitol Theatre* (formerly the *Empress*), Kamloops.
The *Strand Theatre,* Chilliwack.
The *Empress Theatre,* Kelowna.

The agreement dated April 29, 1929, (Exhibit 87) between Rolland E. Berry of Vancouver, thereinafter called the "Proprietor" and Famous Players Canadian Corporation, thereinafter called the "Corporation" recites that the "Proprietor" owns the Kitsilano Theatre at Vancouver, the Empress Theatre at Kelowna, the Empress Theatre at Kamloops, the Strand Theatre at Chilliwack, the Empress Theatre at Vernon, and is lessee of the strand Theatre at Kamloops and the Empress Theatre at Penticton.

The agreement provides that the " Proprietor " agrees to assign to the " Corporation " the lease of the Strand Theatres at Kamloops and the Empress Theatre at Penticton, and to assist the " Corporation " in getting renewals thereof and also to lease to the " Corporation " the five theatres above referred to, and of which he is the owner, for a period of ten years from June 3, 1929, with the privilege of the renewal for a further period of ten years at the option of the " Corporation " on the said terms and conditions. The rental and consideration for the assignments of the two leases is $20,000 per annum.

The agreement contains provisions in regard to the insurance, repairs and replacements, and provides that the " Proprietor " shall be retained as Supervisor at a salary of $5,000 per annum, and that he will be subject to and take directions from the " Corporation " and further that he will not directly or indirectly, either as owner, shareholder, manager or employee or otherwise be engaged in the theatre business in the Dominion of Canada during the currency of the leases or the renewal.

By a letter dated April 29, 1929, and attached to Exhibit 87, the Famous Players Canadian Corporation agrees with Mr. Berry to take over his lease of the old *Imperial Theatre* at *Chilliwack,* expiring not later than the end of the year 1931 at a rental of $155 per month, the building be rented as a store for $50 per month, which latter is payable to Famous Players Canadian Corporation. By this letter Famous Players also agree to take over all film contracts into which Berry had entered " except those which are cancellable " which are to be cancelled.

By lease dated August 31, 1929 (Exhibit 88), the *Kitsilano Theatre* at *Vancouver,* the *Empress Theatre, Vernon;* the *Empress Theatre, Kamloops,* the *Strand Theatre, Chilliwack,* and the *Empress Theatre, Kelowna,* are leased for the ten-year term from September 23, 1929, with appropriate provisions in respect of the destruction by fire of any of the theatres, and insurance on the chattel property in connection therewith. The lessee, Famous Players Canadian Corporation, assumes the obligations of Berry in respect to the lease of the *Imperial Theatre* at *Chilliwack* referred to above.

By reference to Exhibit 6, page 12, it will be observed that these theatres are listed, as of August 30, 1930, as being leasehold theatres operated by Famous Players Canadian Corporation. The lease of the Empress Theatre at Penticton way by the agreement (Exhibit 87), to have been transferred to the Famous Players Canadian Corporation. This was not done. The Famous Players Canadian Corporation, however, acquired the freehold of this theatre, as appears on page 11 of Exhibit 6. It is now owned and operated by Famous Players Canadian Corporation separately.

Vernon is a town of about 4,000 population and the Empress is the only theatre there.

Kamloops is a town of about 5,500 population and in addition to the *Capitol* there is located there the *Rex* theatre owned and apparently operated by one W. A. Wilkinson.

Chilliwack is a town of about 2,500 population and the Strand theatre is the only theatre there.

Kelowna is a town of about 4,000 population and the Empress theatre is the only theatre there.

Penticton is a town of about 4,000 and the Empress is the only theatre in operation there.

7. *Rossland*—Capitol Theatre

Famous Players Canadian Corporation leases and operates this theatre. It is the only sound theatre in Rossland which has about 2,000 population. (See Exhibit 347).

8. *Vancouver*—Orpheum Theatre

This theatre was built by Mr. Langer and was, as already stated, about to be erected when the negotiations were in progress for the lease of the theatres in the Langer Circuit. It was completed by Mr. Langer and leased to an independent exhibitor, the Orpheum Theatrical Company Ltd. This was one of the theatres which under the agreement, (Exhibit 29) dated May 29, 1929, between Famous Players Canadian Corporation and Radio-Keith-Orpheum Corporation, providing for the merger of the latter's interest in Canada with Famous Players, was to be taken over by a new company, to be known as R-K-O Canada Ltd., and this was done as appears by Exhibit 6, page 18. Further reference will be made to this agreement.

Mr. Cohen states (Evidence, p. 2008) that this theatre never made a dollar from the day it was built and that it lost a great deal of money during the two years of its operation by the R.K.O. Corporation.

(C) ONTARIO

1. *Kitchener*—Capitol Theatre—Lyric Theatre

The Paramount Kitchener Theatres Limited was incorporated by Ontario charter dated June 12, 1920, with head office in Toronto. The capital was $200,000 7 per cent cumulative preference shares, with no voting rights until in arrears in dividends for one year, and 14,000 common shares with a par value of $25. In June, 1920, a booking agreement was entered into with Paramount Theatres Limited, which was a 100 per cent subsidiary of Famous Players, and for which booking agreement Paramount Theatres Limited obtained 13,993 shares of the common stock of the company, being all of the common shares except the qualifying shares.

Coleman and Company agreed to assign their interest in certain lands available as a theatre site, the vendors being the trustees of the estate of Louis Breithaupt, to whom the company agreed to pay $6,000 in cash and to give a mortgage for $57,000. Paramount Kitchener Theatres Limited built the *Capitol Theatre* on this site in 1921. The preference shares were underwritten by Coleman and Company and sold to the public in an amount presently issued of $157,900 and in connection with the sale thereof, the Paramount Theatres Limited contributed a portion of the common shares which they had acquired, to be given as a bonus on the sale of the preferred shares. Paramount Theatres Limited at present hold 54·88 per cent of the common shares, and Famous Players Canadian Corporation ·42 per cent thereof and 6·27 per cent of the preferred.

The directors of the Paramount Kitchener Theatres Limited are:

Arthur Cohen, President.
Clarence Robson, Vice-president.
N. G. Barrow, Secretary.
T. J. Bragg, Treasurer.
Harry Sedgwick, Asst. Secretary.
D. S. Bowlby.
D. C. Young.

Paramount Theatres Limited carried on the operations of this theatre until January 1, 1928, from which date it was leased to Famous Players at an amount sufficient to pay an annual dividend of 5 per cent on the 7 per cent preferred stock of the company then outstanding. In this lease there is a further provision whereby Famous Players agreed to hand back the theatre at the expiration of the lease free of encumbrances, i.e., that Famous Players undertook to retire the principal of the outstanding mortgage, then amounting to some $15,000.

On January 21, 1928, an agreement was entered into between Famous Players, then lessees of the Capitol, and the Rex Theatres Limited, then the owner and operator of the *Lyric Theatre* in Kitchener, for the joint operation of the two theatres for nine years and eleven months expiring on December 31, 1937. The Rex Theatre Limited was an Allen Company, of which H. Allen was the president and S. Crafton was the vice-president.

This is a pooling agreement and it provides that the two theatres shall be managed and operated by Famous Players, and that the pictures therefor shall be contracted for by Famous Players and that dating thereof shall be by Herbert Allen subject to the direction of Famous Players. The admission price of each theatre is fixed, and the Lyric is to have a combination policy of pictures and vaudeville, while the Capitol is to show pictures only. The agreement gives the right to Famous Players to close the Capitol Theatre any time it sees fit to do so.

The agreement further provides that after payment of expenses and the creation of a reserve fund to be maintained at $1,000, any surplus shall be paid weekly in equal amounts to Famous Players and the Rex Theatres Limited. By reference to Exhibit 145 it will be observed that the price of admission in the Lyric was increased for adults, at the evening performance and Saturday matinees, from 35 cents to 45 cents, while the prices of the Capitol remained substantially the same.

Both of these theatres are called first run and are the only theatres operated in Kitchener. The competition between them and otherwise in that city was by this agreement eliminated. The population of Kitchener is about 30,000, and the operation of the theatres has been exceedingly profitable.

2. *Hamilton*—Strand, Capitol, Pantages, Tivoli and Savoy Theatres

Strand.—This theatre was erected by a local syndicate in Hamilton, and Messrs. Morgan-Dean, Harris & Mulvaney, Limited, underwrote the shares and apparently were in control by virtue of their underwriting agreement. On September 28, 1920, this company, called " the Bankers ", and Paramount Theatres

Limited, called the "Operators", entered into an agreement which recites that the bankers are interested in and control the *Strand Theatre* and have caused Strand Hamilton Theatres Limited to be incorporated, and have proposed that they will vest in the said company the said theatre, subject to a mortgage of $45,000 and will make special financial arrangements for the said company, in consideration of which the operators are to enter into an agreement to operate the theatre for twenty years.

The agreement provides for the conveyance of the theatre to Strand Hamilton Theatre Limited, subject to the said mortgage, and for payment to the said theatre company of $10,000 in cash, for the consideration of $150,000 payable by the issue and allotment of 75,000 of preference shares and 75,000 of common shares, being all of the capital stock of Strand Hamilton Theatre, Limited. The company is to be managed by five directors, of which the Paramount Theatres Limited shall have the right to elect three, and the bankers agree to transfer to the operators $37,600 in fully paid common shares on the execution of the agreement to operate the theatre.

The operating agreement is attached to the main agreement, which is Exhibit 106, and provides that the Paramount Theatres Limited shall have full control of the management of the theatre for 20 years. It is a term of the agreement that the Paramount Theatres Limited shall not be in any way morally or financially responsible for the success of the operation. Provision is made that the Paramount Theatres Limited may cancel the agreement if the theatre company fails to make payment for pictures or advertising matter, or other proper payments, for one month, and in the event of cancellation Paramount Theatres is to be entitled to retain the $37,600 of common shares as it own property. By this arrangement Paramount Theatres Limited, a 100 per cent subsidiary of Famous Players, obtain $37,600 of shares at par in this company and control of the theatre for twenty years without any capital investment. (Evidence, pp. 1260, *et seq.*)

No dividends have been paid on the common shares, but a substantial surplus has been built up by way of reserve for depreciation and payment off of the mortgage. Mr. Bragg says (Evidence, p. 1271) that the operation has been a moderate success.

The present directors of Strand Hamilton Theatre Limited are:

C. Robson, President and Managing Director.
Dr. W. A. Bodkin, Vice-President.
T. J. Bragg, Treasurer.
George Stroud.
H. Sedgwick.
Mr. N. G. Barrow is Secretary.

Mr. Stroud is connected with Hamilton United Theatres Limited, with which Famous Players has a pooling arrangement.

Hamilton Pooling Agreement—Capitol, Pantages, Tivoli and Savoy Theatres.

Reference has been made on page 26 of this report to an agreement of February 7, 1930, by which Famous Players agree to manage and operate these four theatres for 10 years from March 1, 1930. It will be observed (Evidence, p. 764) that the lease of the *Tivoli Theatre* was held by Brighton Theatres Limited under a lease dated June 18, 1928, and that this had been in reality acquired for Famous Players and had been operated on behalf of Famous Players. The lease was taken by Brighton Theatres Limited because the persons interested did not care to deal with Famous Players, and Famous Players acquired the stock of Brighton Theatre Limited, which has issued five shares, the only asset of which was this lease. Exhibit 140 is an agreement of March 1, 1929, between Famous Players and Brighton Theatre Limited. It is recited that Brighton Theatre Limited is operating the theatre in Hamilton, and the agreement provides that Famous Players is to manage the theatre and supervise its general conduct and supervision, in consideration of which the Brighton Theatre Limited has to pay Famous Players $49,950, which Famous Players agrees to accept in common stock of the company. These shares were allotted by Brighton Theatre Limited at a meeting on March 11, 1929 (Evidence, p. 1769). At this meeting Messrs. Crafton, Allen, Cohn, Bragg, Robson and Barrow were elected directors. The lease of the Hamilton theatre known as the Tivoli, dated June 18, 1928, was for ten years from July 2, 1928, at a rental of $11,000 for the first five years and $12,000 for the second five years. The operations of this theatre previously to the entering into of the pooling agreement (Exhibit 105) were not profitable. The combined operations of the four theatres after the pooling agreement, however, have shown a very large profit.

It appears that the *Savoy Theatre* has not been operated by the pool, except on one or two occasions when it was rented (Evidence, p. 1242). It was an old theatre and not wired for pictures. It also appears (Evidence, p. 1245) that the *Capitol* in 26 weeks under the pooling agreement made an operating profit twice as much as it had made the previous year. The *Savoy* had been operating at a loss and when it was closed this loss lessened. It also appears (Evidence, p. 1246) that the net profit of the three theatres, Pantages, Capitol and Savoy, in the year ending August 30, 1929, was roughly three-quarters of what it was in the first six months under the pooling agreement.

3. *Peterborough*—Capitol Theatre—Grand Theatre—Royal Theatre

Paramount Theatres Limited has a 66·7 per cent stock control of Paramount Peterborough Theatres Limited, a company incorporated under the Ontario Companies Act on September 10, 1920, which company owns and operates the *Capitol Theatre, Peterborough,* a first run house with 1106 seats. Paramount Theatres Limited is a 100 per cent subsidiary of Famous Players.

Theatrical Enterprises Limited is a 100 per cent subsidiary of Famous Players, the shares of which were acquired by them on March 13, 1925, from the Trustee of Trans-Canada Theatres Limited, an Allen incorporation. Theatrical Enterprises Limited holds the *Grand Theatre,* under lease dated November 20, 1925 (Exhibit 225) for a term which has been renewed from time to time, once by Exhibit 14. This theatre has been closed under an agreement dated November, 1925, between Paramount Peterborough Theatres Limited and Schneider-Rishor Limited, and subsequent renewals by which it was provided that Paramount Peterborough Theatres Limited would not use the theatre for motion pictures or vaudeville, or stock companies, or travelling amusement companies at admissions of 25 cents for adults, or less. The theatre has been open for road shows, and occasionally rented, as appears also by Exhibit 225.

Theatrical Enterprises Limited also holds a lease of the *Royal Theatre, Peterborough* from R. L. Glover, dated November 20, 1925, the term of which has been extended and is at present subsisting (Exhibit 15). The theatre was actually acquired on December 1, 1925, and has remained closed since December 12, 1925. It is subject to the agreement of November, 1925, between Paramount Peterborough Theatres Limited and Schneider-Rishor Limited above mentioned. Both of these theatres are leased by Theatrical Enterprises Limited to Paramount Peterborough Theatres Limited, without profit to Theatrical Enterprises Limited. Reference to the evidence of Mr. Bragg as to the situation at Peterborough appears on page 171 of the evidence, where he says it was felt that all the theatres in that town should be operated for the benefit of Paramount Theatres Ltd.

Peterborough has another small theatre of 595 seats called the *Regent,* which is operated by Schneider-Rishor Limited. The population of Peterborough is about 22,000.

The directors and officers of Paramount Peterborough Theatres Limited are:

Arthur Cohen, President.
Clarence Robson, Vice-President.
T. J. Bragg, Treasurer.
H. Sedgwick, Assistant Secretary.
N. McLeod, Director.
Mr. N. G. Barrow is the Secretary.

The directors of Theatrical Enterprises Ltd., are:

Clarence Robson, President.
N. G. Barrow, Secretary.
T. J. Bragg, Treasurer.

4. *Chatham*—Chatham Theatre
St. Catharines—Palace Theatre
Woodstock—Capitol Theatre
Trenton—Trent Theatre

These theatres are under lease to Theatrical Enterprises Ltd., which was a Dominion company incorporated on May 20, 1924, and as already stated is a 100 per cent subsidiary of Famous Players. The head office of this company is in Montreal. The interest of Famous Players in Theatrical Enterprises Ltd., was acquired as of March 20, 1925, on the transfer of 995 shares from the Quebec Savings and Trust Company. The lease of these theatres was renewed on March 28, 1929, for five years.

Chatham Theatre, Chatham—This theatre was formerly called the Capitol, and has been operated since its acquisition by Theatrical Enterprises Ltd., part of the time, up to April 10, 1930, when it was closed on the opening of the new Capitol theatre, hereinafter referred to.

The *Palace Theatre, St. Catharines*—This theatre was acquired on March 11, 1925, and was first closed on May 29, 1926. It was open occasionally and for part of the week only, at various periods, until July 27, 1929, since when it has only been open two days in October, 1929, for the Dumbells; one day for Maurice Colbourne; and one day on which it was rented. The Dumbells and Maurice Colbourne present road shows.

The *Capitol Theatre,* owned by the Allens St. Catharines Theatre Ltd., and leased by Famous Players, is a first run house, as is also the *King George* which is run in opposition to the Capitol. The Capitol and the King George are the only theatres in St. Catharines in which sound equipment is installed. St. Catharines has a population of about 25,000.

The *Capitol Theatre, Woodstock.*—This is a first run house with a seating capacity of 1212 seats. The only other theatre in Woodstock which is a city of about 11,000 population, is the *Princess* with a seating capacity of about 400 seats. The Capitol, Woodstock, is being operated.

The *Trent Theatre, Trenton.*—The Trent Theatre was acquired by Famous Players under lease dated January 12, 1927, between the Trent Amusement Co., Ltd., and Theatrical Enterprises Ltd., for five years from January 1, 1927, with a provision for a renewal for a further term of five years at the option of Theatrical Enterprises Ltd. A Mr. McCarthy apparently had a half interest in the Trent and owned the *Belle Theatre* in *Belleville*, which latter theatre Famous Players later purchased, and some of the negotiations were apparently conducted through Mr. McCarthy. (See correspondence, Exhibit 146.)

The *New Capitol Theatre, Chatham.*—This theatre was opened on April 11, 1930. It was built by one Mike Harris and his associates, and purchased by Famous Players before it was opened, at a time when it was only partially built (Evidence, p. 2887).

Paramount Theatres Ltd., had a lease of the *Princess Theatre in* Chatham, from George and Richard Zakoor, for five years from September 4, 1927, and was apparently operating that theatre, when on March 13, 1929, a Mr. J. W. Berman, special representative of Vitagraph Incorporated, wrote to Mr. Nathanson (Evidence, p. 2883, Exhibit 193) informing him that Mike Harris was promoting an organization of business men in Chatham to build a theatre near the Princess. Apparently this caused negotiations which resulted in the purchase of this theatre, which became the New Capitol, and upon the opening of which, on April 11, 1930, the Princess was closed and so remains (Evidence, p. 2885). It was actually constructed by the Harris Theatres Limited of Sarnia, Ontario.

Chatham has now only the New Capitol, equipped with sound, in operation, and Famous Players through its subsidiary controls the situation in that city, which has a population of about 16,000.

5. *Brantford*—Capitol Theatre—Brant Theatre

The Paramount Brantford Theatres Limited is an Ontario company incorporated by letters patent dated January 19, 1921, with head office at Toronto, and with an authorized capital of $225,000 preference shares at $100 par value and $350,000 common shares at $10 par value. In January, 1921, Famous Players seems to have had a substantial stock interest in this company, and acquired in 1929 from the Canadian Bank of Commerce, to whom some of the shares were pledged, additional shares, so that now their stock interest is 70·87 per cent in the preference shares and 85·27 per cent in the common shares (Exhibit 235).

The *Temple Theatre,* now the *Capitol,* was acquired by Paramount Brantford Theatres Limited under an agreement of January, 1921 (Exhibit 142), between Brant Amusements Limited and Paramount Brantford Theatres Limited, and, incidental thereto, the Brant Amusements Limited transferred to the Paramount Brantford Theatres Limited a franchise or operating agreement from Famous Players Canadian Corporation Limited, a copy of which is attached to the Exhibit.

This latter agreement is between Famous Players and Paramount Brantford Theatres Limited, and recites that the Paramount Brantford intend to take over and acquire a theatre in Brantford and desire to make a contract with Famous Players for operating the said theatre. Famous Players agrees to select a manager and supervise the operation of the theatre and to book pictures and other entertainment, and arrange a supply of advertising material, for twenty years from February 1, 1925. The agreement contains the usual provisions to the effect that Famous Players is not to be financially responsible and does not guarantee the financial results.

By a further agreement of the said date (attached to Exhibit 142), between Brant Amusements Limited and Famous Players, it is recited that the parties by reason of their stock holdings will be financially interested in Paramount Brantford Theatres Limited, and that Brant Amusements Limited desire to sell to the public certain of their stock holdings and wish to make certain statements as to Famous Players Canadian Corporation Limited in connection with the sale of the said stock holdings. The agreement provides that Paramount Brantford Theatres Limited in selling any stock owned by them may announce that Famous Players will under a franchise or operating agreement operate the theatre, and that the directors of the Paramount Brantford Theatres

Limited shall be Messrs. J. P. Bickell, W. J. Sheppard, J. B. Tudhope, N. L. Nathanson, Roger A. Secord, Ernest Moule, and one other director to be approved by the two latter.

Under the same date there is an agreement between Brant Amusements Limited and Famous Players (attached to Exhibit 142), which recites that Brant Amusements Limited are selling one of their theatres in Brantford and, as one of the terms of the sale, the Brant Amusements Limited have undertaken to furnish Paramount Brantford Theatres Limited, the purchaser, with a management or franchise agreement in the usual form granted by Famous Players Canadian Corporation Limited, and that Famous Players agreed to enter into such contract upon payment to them of the sum of $231,350, payment of which is to be made by delivery of 23,135 shares in Paramount Brantford Theatres Limited, which will be fully paid up and non-assessable, and the agreement provides accordingly.

In the result, Famous Players acquired control of this theatre and $231,350 of par value common shares, a small portion of which shares were to be used for bonusing the sale of preference shares. Famous Players has since operated and controlled this theatre.

The *Brant Theatre* was apparently leased by one Ernest Moule, and from the early part of 1922 has been operated by Famous Players, the earnings being taken by the Paramount Brantford Theatres Limited. The theatre appears to have been actually owned by some people by the name of Lyons and was under lease to Moule. The arrangements up until 1928 appear to have been otherwise rather indefinite. By a lease of the 15th September, 1928 (Exhibit 141), Ernest Moule assigned to Paramount Brantford Theatres Limited a lease of May 28, 1927, from Arthur C. Lyons to himself for ten years from February 1, 1928, and also a lease of January 25, 1927, between Brant Apartments Limited and Brant Amusements Limited, which by the indenture of September 15, was assigned to Ernest Moule, these two being the leases held by Moule and comprising the property known as the Brant Theatre. The lease is for ten years from September 15, 1928, being for the term of the above recited leases less one day. This theatre has not been operated continuously.

The Brant and the Temple (now the Capitol) are the only theatres operating in Brantford, and Famous Players, through its subsidiary, Paramount Brantford Theatres Limited, has since enjoyed a virtual monopoly of the theatre business in that city. The operations have been very profitable. Brantford has a population of about 30,000.

The present directors of Paramount Brantford Theatres Limited are:

A. Cohen, President
C. Robson, Vice-President
T. J. Bragg, Treasurer
H. Sedgwick, Assistant Treasurer
E. Moule, Managing Director
W. T. Henderson and
R. H. Short

four of these being either officers or employees of Famous Players.

6. *Guelph*—Regent Theatre—Capitol Theatre

The *Regent Theatre* was acquired on February 5, 1920, by purchase from Famous Players Lasky Corporation of all the shares of Paramount Theatres Limited owned by Canadian Paramount Corporation (Exhibit 124, and Evidence, p. 1314). The present rental is $5,200, which is absorbed by the profits from the Capitol Theatre. The present lease of the Regent is from George W. Reinhart and J. H. Collins, dated January 23, 1930, the term being five years from July 29, 1930. It will thus be seen that the theatre though maintained closed has been re-rented.

The *Capitol Theatre* was acquired under lease from Elizabeth Keleher, dated March 2, 1923, for ten years from April 16, 1923, and is the first run theatre in Guelph, in fact, the only one now operated.

Guelph has a population of about 30,000, and Famous Players by its control of the Capitol Theatre and by maintaining the Regent closed has acquired a virtual monopoly of the theatre business in Guelph.

7. *Port Arthur*—Lyceum Theatre—Colonial Theatre

The *Lyceum.*—Paramount Theatres Limited had a lease from A. J. McComber of this theatre, which was, on February 23, 1923, assigned by Paramount Theatres Limited to its 100 per cent subsidiary, Paramount Port Arthur Theatres Limited (Evidence, p. 1303). The lease expired on December 24, 1929, and was not renewed, and has not since been operated.

The *Colonial* was leased by Paramount Port Arthur Theatres Limited from Temple Godman and George W. Godman under lease dated October 1, 1924, for seven years and was renewed for a period of eight years from October 1, 1931 (Evidence, pp. 1319-1320). This is a first run theatre in Port Arthur and in fact the only theatre now operating there. The operation has been very profitable. Port Arthur has a population of about 20,000.

8. *Fort William*—Orpheum Theatre—Royal Theatre—Corona

Orpheum.—This theatre is leased by Paramount Theatres Ltd., from one J. C. Murray for seven years from August 1, 1927 (Evidence p. 1313).

Royal.—This theatre is leased from one John C. Graham by the same subsidiary of Famous Players for ten years from November 1, 1927, at a rental of $9,000 per year for the first five years and $10,000 per year for the next five years (Evidence p. 1313). It is maintained closed (Exhibit 6, p. 16).

Corona (Dance Hall).—These premises were purchased by Famous Players from Canada Permanent Mortgage Corporation in May, 1928 (Exhibit 224). It had originally been constructed as a motion picture theatre (Evidence p. 3308) but was being used as a dance hall at the time of acquisition. Famous Players lease it occasionally. There is no regular attendant on the premises (Evidence p. 3309). The conversion to a dance hall took place prior to Famous Players acquisition.

The Orpheum is a first run house, and in fact, the only moving picture theatre in operation in Fort William, which has a population of about 21,000. The operation even after absorbing the loss on closed houses has been exceedingly profitable.

9. *Galt*—Regent Theatre—Capitol Theatre

Regent.—This theatre was one of the original chain acquired in 1920 by acquisition of stock of Paramount Theatres Ltd., and is presently held by lease to Paramount Theatres Ltd., from James Scott and B. F. Bennett for five years from April 27, 1928. It is maintained closed (Exhibit 6, p. 16).

Capitol.—This theatre is owned by the Galt Theatre Co., Ltd., of which company Famous Players own 25 per cent of the preference shares and 35 per cent of the common shares. The first acquisition of stock by Famous Players was in November, 1929. The directors of the company include Clarence Robson as representative of the Famous Players Canadian Corporation. The theatre is leased to Famous Players. It is a first run house and in fact the only theatre operating in Galt, which has a population of over 13,000.

By leasing and operating the Capitol, and leasing and maintaining closed the Regent, this company Famous Players have a virtual monopoly of the theatre business in Galt.

10. *Famous Players Acquisition of Allen Theatres*, 1923.

By an agreement dated June 6, 1923, Famous Players acquired control, or substantial interests, from G. T. Clarkson, the liquidator of Allen Theatres Limited, in the following companies and theatres:

Theatre	*Place*	*Company*
Beach	*Toronto*	Allen's Beach Theatre Limited
St. Clair	*Toronto*	Allen's St. Clair Theatre Limited
Parkdale	*Toronto*	Allen's Parkdale Theatre Limited
College	*Toronto*	Allen's College Theatre Limited
Danforth	*Toronto*	Allen's Danforth Theatre Limited
Bloor	*Toronto*	Allen's Toronto Theatre Limited
Beaver	*Toronto*	Beaver Theatre Company Limited
Capitol	*Kingston*	Allen's Kingston Theatre Limited
Capitol	*St. Catharines*	Allen's St. Catharines Theatre Ltd.
Capitol	*Cobourg*	Allen's Cobourg Theatre Limited
Classic	*Stratford*	Stratford Theatre Company Limited
Capitol	*Paris*	Paris Theatre Company Limited
Regent	*Ottawa*	Allen's Theatres Limited, Ottawa
Metropolitan	*Winnipeg*	Allen's Winnipeg Theatre Limited
Capitol	*Edmonton*	Allen's Edmonton Theatre Limited
Palace	*Montreal*	Allen's Montreal Theatre Limited
Allen (now *Palace*)	*Calgary*	Allen's Theatre Company, Limited (Calgary)
Capitol	*Moose Jaw*	Allen's Theatre Company, Limited (Calgary)
Capitol	*Brandon*	Allen's Theatres Limited, Brandon
Metropolitan	*Regina*	Allen's Theatres Limited, Regina

The offer of Famous Players is contained in a letter to Mr. Clarkson, dated June 6, 1923 (Exhibit 213). This has already been dealt with in part when referring to the British Columbia situation. By reference to Exhibit 123, which is a list of companies in which substantial holdings were acquired from the trustees of Allen Theatres Limited under the above agreement of June 6, 1923, it appears that Famous Players acquired share control of all these except Allen's St. Catherines Theatre Limited, Allen Danforth Theatre Limited and Toronto Theatre Limited. As to the *Capitol, St. Catharines*, Famous Players has leased this and has control of the theatre operations. In regard to the *Danforth Theatre*, this company was bankrupt and they went out of business, and the shares were valueless (Evidence, p. 1537). In reference to the Toronto Theatre Limited, this was a holding company which owned all the shares of the Bloor Theatre Limited, Toronto, operating the *Bloor Theatre* (Evidence, p. 1859).

The situation in regard to these theatres may be summarized as it is in Mr. Bragg's evidence (p. 1536):

> "We acquired control of certain of those companies, but we actually acquired the management control of all of them after meeting the shareholders of the respective companies....................When the shareholders of these various companies met they elected boards of directors, the majority of whom were nominees of Famous Players Canadian Corporation Limited."

I have examined the minute books and other corporate records of most of these companies and find that corporate action was taken which bears out Mr. Bragg's statement.

The Toronto situation will be dealt with hereafter specially.

11. *Kingston*—Capitol Theatre—Grand Theatre—Tivoli Theatre

Capitol.—This was an Allen acquisition in 1923 as above mentioned, and is presently leased to Famous Players by Allen's Kingston Theatre Limited.

Grand.—This was purchased (Evidence, p. 3331) on April 3, 1925, it being one of the remaining assets of Trans-Canada Theatres, Limited, which had gone into bankruptcy. The theatre has been operated for road shows until comparatively recently, but the Government has now condemned it and it has not been in operation.

Tivoli (formerly Strand).—This was one of the theatres originally acquired by Famous Players in 1920, and on December 8, 1926 (Evidence, pp. 3332-3) it appears that there was a verbal arrangement for the pooling of the Strand and the Capitol Theatres. The lease of the Strand Theatre expired and was not renewed, but subsequently the property was purchased by Famous Players, the old Strand Building remodelled, and it is now being operated as the Tivoli Theatre.

Famous Players thus has acquired control of the two leading theatres in Kingston, the Capitol with a seating capacity of 1,207, and the Tivoli with 512 seats. The only other theatre is the King Edward, a small theatre of 258 seats. The population of Kingston is about 21,000.

12. *London*—Capitol Theatre—Grand Theatre—Palace Theatre

Capitol.—Control of Allen's London Theatre Ltd., was acquired by Famous Players in 1924-25, by purchase of shares from time to time. Famous Players presently own 31·39 per cent of the preferred and 75·93 per cent of the common shares. This company owns the Capitol theatre subject to a lease of the land, and lease same to Famous Players. This is a first run theatre.

Grand.—This theatre was purchased by Famous Players' nominee, in March, 1925; it was closed on March 18 upon acquisition. It operated only for road shows and stock companies until 1930, when sound equipment was installed. The theatre has been operated continuously since 1930 by Famous Players.

Palace.—Famous Players acquired the lease of this theatre and ownership of the equipment and furnishings by agreement dated June 17, 1930, from the Independent Amusement Co., Ltd., and one Sam Marks (Exhibit 126). It is leased to and operated by Palace Theatre, London, Ltd., a wholly owned subsidiary of Famous Players. It is a second run house.

The *Capitol* has a seating capacity of 1,296; the *Grand* 1,231; the *Palace,* a second run house, has a seating capacity of 874. The chief opposition is Loew's Theatre with a seating capacity of 1,965 seats, a first run house, the Patricia, with 1,073 seats, and the Rex with 496 seats. London has a population of about 70,000.

13. *Ottawa*—Regent Theatre—Imperial Theatre—Keith's Theatre

Regent.—An Allen acquisition in 1923 under agreement (Exhibit 213).

Imperial.—Held under lease by Famous Players, being acquired in April, 1927.

Both the above are first run houses.

Keith's.—This theatre was acquired as part of the R.K.O. chain in 1929 (Exhibit 29). This will be dealt with separately.

There are nine opposition theatres in Ottawa, which has a population of about 125,000.

14. *Cobourg*—Capitol Theatre

This is another Allen acquisition in June, 1923 (Exhibit 213). Allen's Cobourg Theatre Ltd., a 100 per cent subsidiary of Famous Players, holds the theatre under lease from Florence Sutherland. The Capitol is the only theatre in Cobourg, a town of over 5,000 population.

15. *Paris*—Capitol Theatre

A further Allen acquisition in 1923, presently leased from Famous Players and operated by the Paris Theatre Company Ltd., a wholly owned subsidiary of Famous Players. It is the only theatre in Paris, a town of over 4,000 population.

16. *Welland*—Capitol Theatre—Grand Theatre

Capitol.—This theatre is held under lease from one W. M. German by assignment from one Lambert. The lease is dated August 28, 1924 (Evidence, p. 1316). It was renewed September 1, 1929, for five years in the name of Paramount Theatres Ltd., a Famous Players' 100 per cent subsidiary.

Grand.—Famous Players acquired the lease of this theatre on April 17, 1930, for a term of two years, with an option for a further two years and an option to purchase. The lease provides that the premises need not be kept open or in operation as a moving picture theatre, and the lessee may close the same throughout the term. The lessor covenants that while Famous Players is in occupation she will not

> " directly or indirectly as partner, proprietor, shareholder, or otherwise be engaged in the County of Welland in the business of the construction, proprietorship or operation of any moving picture theatre, or place used, or capable of being used as a place of public entertainment, without the prior consent of the lessee " " it being the express intention of the parties that . . . . the lessor will not either directly or indirectly be engaged in the theatre or public entertainment business in competition with the lessee in the said county " (Exhibit 159).

The lease also provides that the lessor may sell the equipment subject to giving Famous Players the first refusal. The theatre has been maintained closed since its acquisition (Exhibit 225).

The Capitol is the only theatre now operating in Welland, and by maintaining the Grand closed, Famous Players have, through its subsidiary, acquired a virtual monopoly of the theatre business in Welland. The population of Welland is about 10,000. The operation has been profitable even after the rent of the Grand has been absorbed.

17. *Owen Sound*—Classic Theatre—Opera House—Savoy Theatre

Classic.—Lease of this theatre was acquired by Paramount Theatres Ltd., for five years from October 30, 1922 (Exhibit 157). It was subsequently extended for a further term of five years (Evidence, p. 2146).

Opera House.—First acquired by Paramount Theatres Ltd., by lease in November, 1922, expiring November 20, 1924, when it was given up. Subsequently the Opera House was again leased by Famous Players for seven years from September 16, 1929 (Evidence, p. 2515).

Savoy.—One Georgas held this theatre under lease dated March 15, 1923, expiring March 31, 1928, and then renewed for a further term of five years from April 1, 1928, and still held. Paramount Theatres Ltd., entered into an operating agreement with Georgas dated July 2, 1924 (Exhibit 225), and renewed March 21, 1927 (Exhibit 82), whereby Paramount Theatres Ltd., manage and operate and book for the Classic and Savoy and " shall have the executive management and control of the said theatres and shall decide all questions of policy relating to the operation thereof and each of them." Georgas acts as local manager of these theatres at a salary equal to the booking fee to be paid to Paramount Theatres Ltd. The agreement further provides that

> "unless the parties hereto otherwise agree the Savoy shall not during the currency of this term be operated as a motion picture house, but may at the discretion of the company and the local manager be operated for Road Show attractions, or leased for local entertainments."

The term of the agreement continues to October 30, 1932, with the option to Paramount Theatres Ltd., to extend it for a further five years. By the agreement Paramount Theatres Ltd., has a 50 per cent interest in the profits or losses, as the case may be, of the joint operation.

The Opera House was open for 24 days, while leased during 1923-24, and has been closed continuously since date of second acquisition (Exhibit 225). The Savoy was operated about 48 days during 1927-28 season; for the first 7 days during the 1928-29 season, and for 16 days during the 1929-30 season, for legitimate attractions, some few picture road shows and for rentals (Exhibit 139). The operation of the theatres has been profitable.

By acquiring control of the Classic and leasing and maintaining closed the Savoy and Opera House, as above detailed, Famous Players has maintained a virtual monopoly of the moving picture business in Owen Sound, which has a population of over 12,000. There are no other theatres there.

18. *Sarnia*—Crescent Theatre—Imperial Theatre

These theatres are owned and operated by United Theatres Limited (p. 22, *supra*). Control of the Company and the operation of the theatres was acquired by Famous Players on or about January 11, 1928 (Exhibit 225), by acquisition of stock. Famous Players presently own 50·23 per cent of the stock of United Theatres Limited.

The *Crescent* was closed on June 30, 1928, reopened on September 17 of that year and operated until June 29, 1929, and again reopened on September 23, 1929, to operate to May 31, 1930, since when it has been closed.

Imperial is the only theatre operating in Sarnia, which has a population of about 17,000.

19. *Cornwall*—Palace Theatre—Capitol Theatre

In the late Fall of 1926 Famous Players decided to " start building a theatre in Cornwall, or trying to form a pooling arrangement with the Palace Amusement Co." (Evidence, p. 3141.) The Palace Amusement Company then operated the only theatre in Cornwall. Thereupon Mr. Clarence Robson of Famous Players visited Cornwall and obtained an option on a site (Evidence p. 3142). Thereafter an operating agreement dated March 18, 1927 (Exhibit 127-A), was executed between Famous Players and Palace Amusement Company Ltd., the latter owning and operating the *Palace.*

The agreement provided that the Palace Company build a new theatre. Famous Players agreed to select pictures and entertainments therefor and also for the Palace Theatre. The theatre was duly constructed and is now known as the *Capitol.* Of the earnings a fixed annual sum is paid to the Palace Amusement Co., by way of overhead carrying charges. The Palace is operated jointly with the Capitol. The profits or losses of the joint operation are divided equally between Famous Players and the Palace Amusement Company Ltd. The joint operation came into effect on January 2, 1928. The Palace has been closed since January 22, 1928, with the exception of one or two weeks (Exhibit 225).

The Capitol is the only theatre in operation (Exhibit 350) in Cornwall. The population of Cornwall is about 14,000. By the procedure above mentioned, Famous Players acquired a half interest in, and virtual control of, the theatre business in Cornwall, and the operation has been very profitable.

20. *Stratford*—Classic Theatre—Majestic Theatre

Classic.—Control of this theatre was acquired at the same time as other Allen theatre interests in June, 1923. The last current lease thereof expired in September, 1929, and was allowed to lapse.

Majestic.—Stratford Theatre Co. Ltd., a 100 per cent subsidiary of Famous Players, participates in 50 per cent of the profits of this theatre, which is leased and operated by the Peterboro Theatres Ltd., an Allen incorporation. Peterboro Theatres Ltd., and Stratford Theatre Co., Ltd., which controlled the Classic have a pooling arrangement which has been in effect since January, 1928, and they control the property of the former Princess Theatre in Stratford, now closed (Exhibit 117-A).

The Majestic is the only theatre operating in Stratford, which has a population of over 18,000.

21. *Windsor*—Capitol Theatre—Imperial Theatre—Palace Theatre *Walkerville*—Tivoli Theatre

Famous Players acquired control of these theatres as a result of an agreement dated June 16, 1926, between J. O. Reaume, Simon Meretsky and J. Glassco, as vendors; and Famous Players as purchasers (Exhibit 102, also Exhibit 225). The interests of the theatres are vested in Paramount Windsor Theatres Ltd., a company which Famous Players control, having 56 per cent of the stock. The directors and officers thereof are as follows:

A. Cohen, President
T. J. Bragg, Vice-President
N. G. Barrow, Secretary
Clarence Robson, Treasurer
S. Meretsky, Director

The company own and operate the *Capitol* at Windsor, and the *Tivoli* at Walkerville, and lease and operate the *Palace* at Windsor. The *Empire* was acquired on September 6, 1927, and was maintained closed until it was surrendered on August 31, 1930, when, the theatre being obsolete, the lessees were successful in cancelling the lease (Exhibit 225). The other three theatres are operated as first run houses.

The Tivoli is the only theatre in Walkerville, a town of about 7,500. The *Regent* of which one B. Mechanic is the licensee, having a seating capacity of 495, is the only other theatre in Windsor. The combined population of Windsor and Walkerville is about 70,000.

The operation has been exceedingly profitable from its inception.

22. *Belleville*—Belle Theatre—Regent Theatre

These theatres were acquired by Famous Players in September 1929, from J. C. McCarthy. The *Belle* was owned by him, and the *Regent* he held under lease. He had been operating the theatres for some time prior to acquisition by Famous Players. Mr. Robson in his evidence (pp. 279 and 281) states that he had been in negotiation with McCarthy to purchase the Belle, or form some kind of pooling arrangement with him or buy a half interest in the Belle, for a year or possibly two years prior to July, 1929. An option was acquired by Famous Players, dated July 26, 1929 (Exhibit 70), for the purchase of the Belle and the acquisition of the lease of the Regent. The option was taken up on August 13, 1929, and the two theatres acquired in September, 1929.

The Belle has been operated since acquisition. The Regent was closed upon acquisition, but shortly after opened until May 31, 1930, when it was again closed, and so remained up to the date of taking evidence. The Belle has a seating capacity of 961, the Regent of 502. There is one other theatre in Belleville, the *Capitol,* having 860 seats. The licensee is Robert W. Weller, who also operates Weller's Opera House at Trenton. The Capitol is equipped with Pacent sound equipment. Belleville has a population of about 13,000.

23. *Brockville*—New Brockville Theatre—Capitol Theatre

Control of these theatres was acquired by Paramount Theatres Limited, Famous Players' wholly owned subsidiary, under an operating agreement for four years from September 5, 1929 (Evidence, p. 1318), whereby the two theatres are jointly operated. There were, however, prior operating agreements, the first of which commenced September 1, 1923 (Exhibit 225). The *New Brockville* was first closed on that date. It has been opened occasionally since then for legitimate and some few moving picture road shows, and for other rentals.

Paramount Theatres Limited have a 75 per cent interest in the results of the joint operation (Exhibit 235, p. 8). The New Brockville has shown an operating loss over the past three years, but the operation of the *Capitol,* even after absorbing the loss of the New Brockville, has been very profitable.

They are the only theatres in Brockville and Famous Players has a virtual monopoly of the theatrical business in this city, which has a population of about 10,000.

24. *Sault Ste. Marie*—Algoma Theatre

The site was purchased by Famous Players in 1929, the theatre constructed and opened thereafter. It has 1,042 seats and is a first run house. There are two other theatres there, the *Orpheum* seating 590, the licensee being Stevens Orpheum Limited, and the *Princess* seating 332, the licensee being L. & W. Amusement Company. The population is about 22,000.

25. *Sudbury*—Capitol Theatre

Negotiations for the acquisition of a site in Sudbury commenced as early as May 30, 1929 (Evidence, p. 1009). The conveyance of a portion of the site which was ultimately acquired is dated July 11, 1929 (Evidence, p. 1010). Thereafter the theatre was erected by Famous Players and was opened in 1930. The *Capitol* has 1,419 seats.

There are two other theatres equipped with sound in Sudbury, viz: the *Grand Opera House* with 869 seats, the licensee being Grand Theatre of Sudbury, Limited, and the *Regent* with 544 seats, the licensee being Stevens Theatres Limited. Sudbury has a population of about 20,000.

26. *Port Hope*—Regent Theatre—Capitol Theatre

The *Regent*—This theatre was acquired by Famous Players a number of years ago. It was closed a year prior to the erection of the Capitol (Evidence, p. 657) and presently has been condemned as a theatre (Evidence, p. 654).

The *Capitol*—The site was acquired by Famous Players, the theatre erected and opened about June 8, 1930 (Evidence, p. 657). The Capitol is now the only theatre in Port Hope, which has a population of about 4,500.

27.—*North Bay*—Capitol Theatre

By an agreement entered into in 1928 (Exhibit 83) Louis Rosenbaum agreed with Famous Players that he would build a theatre on lands described in North Bay and according to plans to be approved by Famous Players. The agreement further provides that upon completion Famous Players would operate and manage the theatre for $50 a week, and, after deducting 5 per cent on the cost of the land and building and 7 per cent on the cost of furnishings and an operating expense as therein defined, the profits were to be equally divided after providing a reserve. Famous Players agrees that the percentages of the value of the land and building and furnishings and equipment shall be paid as a rental to Rosenbaum, and guarantees due payment thereof, also taxes and insurance premiums. Rosenbaum, owing to financial difficulties, was unable to complete the theatre and on May 11, 1929, an agreement (Exhibit 84) was entered into, reciting the purchase of the theatre by Famous Players and a release of Rosenbaum from his covenants and agreements in the earlier agreement of April, 1928 (Exhibit 83).

By an agreement of April 13, 1929 (Exhibit 85), Famous Players having advanced substantial sums of money to Rosenbaum to be applied on cost of the construction of the theatre, agrees to purchase the property and all plant, furnishings and equipment. The purchase price to Rosenbaum was cost, plus $20,000. The total investment appears to be in the neighbourhood of $400,000. There is an operating profit in this theatre, but the operation as a whole has not been successful, having regard to the amounts written off for depreciation of the building, the equipment and, more particularly, the sound equipment.

There is another theatre in North Bay, called the *Royal*, owned and operated by the North Bay Theatre Company Limited. Both of these are first run theatres and apparently compete. The Capitol has 1,435 seats, and the Royal 762. North Bay has a population of about 16,000.

28. *Famous Players Acquisition of Allen Theatres, 1928*

1 *Cobalt*—Classic
2 *Haileybury*—Broadway
3 *Leamington*—Capitol
4 *Preston*—Park
5 *Toronto*—Royce
6 *Weston*—Weston
7 *Wallaceburg*—Capitol (formerly Patricia)
8 *Mt. Dennis*—Mt. Dennis
9 *New Toronto*—Capitol
10 *Port Colborne*—King George
11 *Smiths Falls*—Capitol
12 *Toronto*—New Hollywood
13 *Toronto*—Major, St. Clair
14 *Toronto*—Major, Rogers Rd.

The theatres numbered 1 to 7, inclusive, as previously pointed out in this report, were by the agreements (Exhibits 117-A, 117-B and 117-C) to be taken over by Theatre Holding Corporation Limited upon its incorporation, in which company Famous Players has a 50 per cent interest, and to be operated by Premier Operating Corporation Limited.

Mt. Dennis.—Reference is made to this theatre in Exhibit 117-A, where it is provided that if acquired or controlled by the Theatre Holding Corporation Limited, it shall be operated under an agreement similar to that with Abby Cohn for the operation of the Weston Theatre. An interest in this theatre was acquired by Theatre Holding Corporation Limited quite recently and is now operated under provisions of Exhibit 117-A. Mt. Dennis has a population of about 7,500, and this is the only theatre in operation there. It is a suburb of Toronto.

Capitol, New Toronto.—This theatre is comparatively recently built. This is apparently the only theatre in New Toronto, which has a population of about 6,000.

King George, Port Colborne.—This theatre is apparently owned (Exhibit 235) by the Savoy Theatres Ltd., and Theatre Holding Corporation, Ltd., has a 50 per cent stock interest. It has a seating capacity of 602 and is the only theatre in Port Colborne, a town of about 6,000 population.

Capitol, Smiths Falls.—This theatre is operated by the Gem Theatres Ltd., a 100 per cent subsidiary of Theatre Holding Corporation Ltd. (Evidence, p. 1506). The actual operation, however, is in Premier Operating Corporation Ltd.

The *Princess Theatre* in Smiths Falls, the lease of which was acquired by Premier Theatres Ltd., as previously mentioned, and being for a term of ten years from November 13, 1922, is closed (Exhibits 117-A and 117-B). It will be recalled that this was one of the O'Brien Eastern Ontario Circuit, the lease of which has not been renewed. There was another theatre in Smiths Falls called the *Rideau,* which is apparently not now in operation. The Capitol is the only theatre actually operating and it has a seating capacity of 790 seats. Smiths Falls has a population of about 7,000. It is said that this theatre competes with the *Perth Theatre* in Perth, Ontario, nine miles distant, but this situation will be dealt with later under the heading of Protection. (See p. 143, *post.*)

Major, Roger's Road, Toronto.—This theatre was acquired by a 50 per cent stock ownership, in the latter part of 1930. It has a seating capacity of 658 and is situated in the northwest outskirts of Toronto.

New Hollywood Theatre, Toronto.—The Premier Operating Corporation caused a company to be incorporated called the Federal Theatre Ltd., which had built for it, by the Bennett Organization, in Toronto, the Hollywood. By the rights exercisable in Exhibit 117-B, Theatre Holdings Corporation, Ltd., took over the shares of Federal Theatre Ltd., and the theatre is now being operated by Premier Operating Corporation. The theatre was opened in the fall of 1930 and has a seating capacity of 1029; it is a first run house in the zone.

When this theatre was built the *Queen's Royal,* a small theatre nearly opposite to it on Yonge Street, was closed, but it has since re-opened and is now, as formerly, independently operated. The Queen's Royal has a seating capacity of 538.

Major, St. Clair Avenue, Toronto.—The acquisition of this theatre was contemporaneous with that of the Major, Rogers Road, Theatre. It is on St. Clair Avenue. Theatre Holding Corporation have apparently a 50 per cent interest (Exhibit 235). It has a seating capacity of 620.

29. *Famous Players Toronto Theatres*

(1) *Alhambra*
(2) *Palace*
(3) *Oakwood*
(4) *Capitol* (North Toronto)
(5) *Beach*
(6) *College*
(7) *St. Clair*
(8) *Parkdale*
(9) *Bloor*
(10) *Tivoli*
(11) *Regent*
(12) *Hippodrome*
(13) *Uptown*
(14) *Shea's Victoria*
(15) *Beaver*
(16) *Teck*
(17) *York*
(18) *Grover*
(19) *Christie*
(20) *Danforth*
(21) *Gerrard*
(22) *La Plaza*
(23) *Mavety*
(24) *Prince of Wales*
(25) *Eastwood*
(26) *Parliament*
(27) *Crown*
(28) *Photodrome*
(29) *Victoria*
(30) *Crystal* (given up)
(31) *Wonderland* (given up)
(32) *Greenwood*
(33) *Classic*
(34) *Runnymede*
(35) *Belsize*
(36) *Bedford*
(37) *Imperial*
(38) *Royce*
(39) *Major, Rogers Road*
(40) *Major, St. Clair*

Alhambra Theatre, Toronto.—This was one of the original chain of theatres acquired by Famous Players on February 5, 1920, by acquisition of stock of Paramount Theatres Limited. The current lease is from one J. W. McNabb to Paramount Theatres Limited for ten years from November 17, 1929. It is a second run house in its zone, with a seating capacity of 1,126. It is situated on Bloor Street. The *Bloor Theatre* of Famous Players and the *Madison,* an independent house, are in close proximity to the Alhambra.

Palace Theatre.—The site of this theatre was acquired by Famous Players from N. L. Nathanson on February 26, 1920; thereafter the theatre was erected. The Palace has a seating capacity of 1,599 seats. It is a first run suburban house. It is situated on Danforth Avenue, in the east end of the city.

Oakwood Theatre, Toronto.—This theatre was originally built by two brothers, Jethro and James Crang, who organized a company called the Oakwood Amusement Company. By an agreement (Exhibit 111) dated June 22, 1920, it is recited that Famous Players has the right under an agreement with Famous Players-Lasky Corporation to exhibit the productions thereof in the Dominion of Canada. The agreement provides that upon certain notice from Famous Players, Jethro Crang should take steps to incorporate a company under the name of the Oakwood Amusement Co., Ltd., with a capital of $250,000, and would cause the present Oakwood Amusement Co., Ltd., to transfer its assets to the new company, in consideration of the issue by the new company to the present company or its nominees of its whole capital stock. It further provides that upon incorporation Famous Players would enter into an agreement with the new company for the term of twenty years, by which Famous Players will operate and manage the theatre of the Oakwood Amusement Co., known as the Oakwood Theatre, arrange for a supply of motion pictures films and artists

> "so that the new company will always be supplied with pictures and entertainments, of a character and standard equal to the pictures and entertainments exhibited from time to time in other theatres operated or controlled by Famous Players, such as the Regent and Strand theatres."

It was further provided that the productions of Famous Players-Lasky Corporation would be shown at 20 per cent of the gross receipts of the theatre, and that other pictures would be purchased at the best terms possible, without any profit to Famous Players. The principal agreement (Exhibit 111) further provides that forthwith, on the entering into of this agreement, Crang will cause to be transferred to Famous Players or its nominees half of the issued stock of the new company, and steps will be taken to elect upon the board of directors three nominees of Famous Players, and further provision is made for equality of control. On completion of the organization of the new company and performance of all the conditions, Famous Players is to pay to Crang $25,000 and to deliver two promissory notes of $12,500 each at three and six months.

The agreements were apparently carried out, and later, having acquired additional stock from the estate of one of the Crangs who was deceased, the company was incorporated. The present directors and officers of the company are as follows:

T. J. Bragg, President
Clarence Robson, Vice-President
N. G. Barrow, Secretary
W. E. Kerr, Treasurer
A. Cohen, Director
H. Sedgwick, Director

Exhibit 111 is referred to in evidence, pages 1578 *et seq.*

In reference to the acquisition of the interest in the Oakwood by Famous Players. Mr. Bragg (Evidence, p. 1383) states in answer to my question as follows:

> "Q. It seems to me that there might be some advantage to Famous Players Canadian Corporation, Ltd., by reason of the increased volume which they got and the increased influence with the exchanges by reason of their larger purchasing power?
>
> "A. That might possibly be the case, sir, but I do not think that was the consideration at that time. I think the Crangs were more anxious to secure a proper supply of pictures, as the Allen Theatre had been erected quite close to them on St. Clair.
>
> "Q. And are you suggesting that without this agreement they might not have been able to do so?
>
> "A. They would have secured pictures, but they probably secured better pictures as a result of this agreement."

It is to be noted that on October 27, 1922, at the annual meeting of the new company, the directors elected were apparently the two Crangs, Messrs. Nathanson, Bickell, Cohen, and Mr. Morlock's name was apparently written in, in pencil. As Mr. Morlock was a member of the solicitors for Famous Players, this would give them four of the six directors. The following year on November 29 the board of directors elected were as follows: the two Crangs, Messrs. Nathanson, Bickell and Bragg. Mr. Bragg was elected secretary-treasurer, and Mr. Barrow assistant secretary (Evidence, p. 1387).

On February 25, 1929, it appears that Mr. Crang Jr. had died, and Mr. Robson was appointed a director and managing director to fill his place. Mr. Jethro Crang tendered his resignation as director and president, and Mr. Sedgwick was elected a director in his place and Mr. Bragg was appointed president. Mr. Morlock tendered his resignation and Mr. Barrow was appointed a director. Thus we have a board composed entirely of officers and employees of Famous Players. This apparently followed the purchase of the Jethro and James Crang Jr. shares. This purchase brought Famous Players' holdings to 75·02 per cent of the issued capital stock.

It would appear from Exhibit 350, p. 3, that Famous Players has a 100 per cent interest in this theatre, but in any event they have control. The seating capacity of this theatre is 1,418 and it is situated near the corner of St. Clair and Oakwood avenues, in the northwest part of Toronto. It is a third-run house and first-run in the zone. This theatre, since Famous Players acquired the interest therein has always shown a large operating profit. Its principal competitors are Allen's St. Clair on St. Clair avenue, west of Oakwood, and the Christie east of Oakwood on St. Clair avenue, both of which are under control of Famous Players or a subsidiary.

Capitol Theatre, North Toronto.—By a document dated December 8, 1922 (Exhibit 109), expressed to be a lease, Ronald McClelland sublet to Paramount Theatres Limited and himself the premises known as the *Capitol Theatre* on North Yonge street, Toronto, for ten years from December 1, 1922, at an annual rental of $8,000 for the first year, $10,000 for the next four years, and $12,000 for the remaining five years of the term.

An agreement expressed to be made on December 1, 1922 (Exhibit 110), but which must have been made subsequently to Exhibit 109, in which McClelland and Paramount Theatres are parties of the first part and therein called "the Lessees," and Paramount Theatres Limited is the party of the second part and is called "the Operating Company," recites that the Lessees have a lease of the Capitol Theatre. The agreement provides that the Paramount Theatres Limited shall operate the theatre, book and supply films and other entertainments as they think best during the term of the above mentioned lease, for which they are to receive $50 per week. McClelland is to manage the theatre at $75 per week

> "subject to the instructions of the operating company as to the policy of the theatre and the course of management as and when the operating company may wish to intervene or lay down regulations in regard thereto."

It is further provided that McClelland may terminate the engagement on one month's notice and that all profits made by the theatre, over and above the amount necessary to pay the operating expenses referred to in the agreement, shall be divided between McClelland and the Paramount Theatres Limited equally, and that pictures of Famous Players Lasky Corporation of New York (now Paramount Publix) shall not cost more than twenty per cent of the receipts.

The theatre has a seating capacity of 1,165, has been operated continuously under this agreement and has proved quite profitable. It is a first-run theatre in the zone, its nearest opposition is the Bedford, some distance north, a small theatre operated by Famous Players jointly with one Walter G. Hunt.

Beach, St. Clair, Parkdale, College, Danforth, Bloor and Beaver Theatres, Toronto.—All of these theatres, as appears on p. 54, *supra,* were acquired from G. T. Clarkson, the liquidator of Allen Theatres Limited, and in view of Mr. Bragg's statement quoted on p. 54, *supra,* the details of the percentage of control appear to be immaterial.

The *Beach* is in the southeast part of the city on Queen street at Waverley, and is quite close to the *Family Theatre* at the corner of Queen and Lee streets, and not far from the *Prince Edward* near the corner of Queen street and Beach avenue. It has 1,537 seats, is a first-run in the zone, and is leased to Famous Players.

The *St. Clair* is in the northwest part of the city on St. Clair avenue near Dufferin street. It is quite close and in the same zone as the Oakwood, and has a seating capacity of 1,556. It is a first-run house in the zone.

Parkdale.—This theatre is in the southeast part of the city on Queen street near Roncesvalles avenue, quite close to the theatre called the *Odeon,* a small independent theatre of 449 seats. It is also first-run in the zone and has a seating capacity of 1,548 seats. The operations of this theatre have been exceedingly profitable. For some unexplained reason this theatre is leased by Allen Parkdale Theatre Limited to Paramount Theatres Limited, for a term of ten years from May 1, 1926. Paramount Theatres Limited is a 100 per cent subsidiary of Famous Players, whereas Famous Players own 17·60 per cent of the preferred shares and 59·78 per cent of the common shares of Allen's Parkdale Theatre Limited.

College.—This theatre is situated on College street, near Bathurst street, very close to a small independent theatre operated by Jacob Cohn, called the *Garden,* with a seating capacity of 567. The seating capacity of the College is 1,518. It is leased to and operated by Famous Players.

Bloor.—This theatre is situated on Bloor street west, just east of Bathurst, and almost opposite an independently owned theatre, the *Madison,* and almost diagonally across from the *Alhambra,* owned by Paramount Theatres Limited. It has a seating capacity of 782 and is a second run house in Toronto, being a first run theatre in the zone.

It is operated under the name of the Bloor Theatre Limited, being a 100 per cent subsidiary of Famous Players. It will be recalled that the shares of the Toronto Theatre Limited, the then owner of the theatre, were purchased from Mr. Clarkson, the trustee of Allen's Theatres Limited. When the existing mortgage was foreclosed, in order to get title to the property Famous Players had to purchase from the mortgagee, the Consolidated Trust Corporation. This was done through Holland G. Darby, an employee of Famous Players, and a company called the Bloor Theatre Limited was then incorporated as of May 15, 1924, and according to the conveyance from Darby to this company, the consideration for the purchase was the assumption of a mortgage for $28,000; $500 for the original incorporators' stock and $39,500 by the issue of 395 shares of the new company's stock. Darby contracted that this stock be given to Famous Players. The mortgage of $28,000 assumed was apparently the mortgage given back as part of the purchase money by Darby. The capital of Bloor Theatre Limited is $40,000 in 400 shares of $100 each. The actual cash paid in addition to the $28,000 mortgage was $10,000 (Evidence, p. 1857).

Beaver.—This theatre is situated on Dundas street west, in the Junction District. Four hundred fully paid shares, being the whole of the issued capital stock of the Beaver Theatres Limited, were acquired from Mr. Clarkson under the agreement dated June 6, 1923 (Exhibit 213), by Famous Players, who operated the theatre until December 8, 1926, when it was turned over to B. & F. Theatres Ltd. under the agreement between Famous Players and Irving Samuel Bloom and Samuel Fine of that date. It has since been operated by the latter company under the terms of that agreement (Exhibit 91). Further reference will be made to this theatre when dealing with the operations of B. & F. Theatres Limited.

Tivoli.—The Tivoli Theatre of Toronto Limited was incorporated on March 20, 1924, with a capital of $40,000 divided into 400 shares of $100 each. Just previous to the incorporation of the company, Mr. Sedgwick, acting for Famous Players, had acquired the leases of this theatre, it being on two separately owned parcels of land. The shares were issued to Mr. Sedgwick for the leases and they were in turn transferred by Mr. Sedgwick to various other officers of Famous Players.

The theatre was originally owned by Temple Theatre Corporation Limited, and by the agreement with Mr. Clarkson of June 6, 1923 (Exhibit 213), 35 preference shares out of an issue of 1,100 and 23 common shares of $100 each in the capital stock of that company were acquired by Famous Players. The affairs of this company got into difficulties and it was in arrears in payments under the leases (Evidence, p. 3259) which had become forfeited, and Famous Players made an arrangement with the owners of the land to clear up the leases, and the Tivoli Company was formed to take them over.

Famous Players has now a 100 per cent interest in this company and theatre and has operated the theatre continuously, and the operations have been very profitable. The *Tivoli* is the leading downtown first run theatre of Famous Players showing exclusively moving pictures, its principal rival being Loew's theatre. It has a seating capacity of 1,553.

Shea's Hippodrome Theatre, Regent Theatre, Shea's Victoria Theatre, and Loew's Uptown Theatre, Toronto.—By an agreement (Exhibit 116) dated October 21, 1922, Shea's Amusement Company Limited and Famous Players Canadian Corporation Limited agreed upon the joint operation of the *Hippodrome* and *Regent* theatres, under which Famous Players was to operate the Regent and from November 20, 1922, assume the management and operation of Shea's Hippodrome and arrange for the productions in both theatres. Famous Players was also to book for Shea's Hippodrome photoplay productions and/or other entertainment.

The basis of this agreement seems to be the franchise which Famous Players had, giving them the right to exhibit in Canada feature pictures produced by Famous Players Lasky Corporation. This franchise agreement has been referred to heretofore, but it might be convenient here to note some of its provisions. It is dated January, 1920, and recites that the New York Corporation, Famous Players Lasky Corporation (now Paramount Publix) is a producer of motion pictures and that Famous Players, called the "New Company" operates a series of theatres in Canada. The agreement provides that the New York Corporation gives and grants to Famous Players for a period of twenty years the right, privilege and franchise to exhibit the productions made by the New York Corporation and its subsidiaries in the theatres operated by the new company in the Dominion of Canada, in each place where the new company or its subsidiaries operates a theatre, before such picture is shown in any other theatre in the said place; such right or privilege being generally known and referred to in the trade as a " first run ". There is to be paid for the right to exhibit pictures 20 per cent of the gross receipts of each theatre for each day on which the Famous Lasky picture is exhibited. Provision is also made that a sale may be made by the New York Corporation to another customer, in case the Famous Players do not accept any picture.

The pooling agreement (Exhibit 16) further provides that after payment of operating expenses and fixed amounts for rentals of the two theatres, the remaining profit shall be divided equally between the parties. Famous Players is to charge $50 weekly for each theatre for its services. The contract also provides that Famous Players during the currency of the contract will not acquire or assume control of, or be interested directly or indirectly in, any downtown theatre which is not then in existence at the date of the contract, without first obtaining the written consent of the Shea Company.

This agreement remained in force until March 22, 1926, on which date a further agreement was entered into (Exhibit 17) between Shea Amusement Company Limited (called " the Shea Company "); Marcus Loew's Theatres Limited (called " Loew's Theatre Company ") and Famous Players Canadian Corporation Limited (called " Famous Players "). The agreement recites that the Shea Company is lessee of *Shea's Hippodrome,* which is owned by Shea's Hippodrome Company Limited, and Famous Players owns and operates the *Regent Theatre* on Adelaide Street, Toronto; Shea Company is the lessee of *Shea's Victoria Theatre,* and that Loew's Theatre Company own and control *Loew's Uptown Theatre,* and also that the parties agree to the joint operation and management from and after August 30, 1926, of all said theatres, and that the Shea Company and Famous Players agree that from and after August 30, 1926, the agreement (Exhibit 16) shall be at an end.

The agreement provides that Famous Players shall continue to operate the Regent and Shea's Hippodrome until August 30, and from that date shall assume management and operation of Shea's Victoria Theatre and Loew's Uptown Theatre, and shall arrange for the production in all four theatres of suitable entertainment, whether by means of artists, motion picture films or otherwise. Famous Players agrees also to book for all said theatres such artists, photoplay production and/or other entertainment and, subject to the approval of Marcus Loew Booking Agency as to the Uptown, may lease any of the theatres for theatrical purposes.

Famous Players in its discretion may close from time to time and keep closed any one or more of the theatres when in their judgment it is advisable to do so, "the intention being to give them, the said Famous Players, the widest possible discretion in the management of the said theatres." It is however, agreed that Loew's Uptown shall not operate under the policy of vaudeville. Each party is to pay the carrying charges of its theatre or theatres respectively.

The gross profits are to be pooled and applied and distributed: firstly, in payment of operating expenses including the booking fee of $50 per week for each house to Famous Players; secondly, pro rata in payment of a weekly rental of each theatre as fixed in the agreement; and thirdly, to divide the remaining profits as follows: To the Shea Amusement Company, proprietors of the Victoria Street Theatre and the Hippodrome, 37½ per cent; to Marcus Loew's Theatre Limited for the Uptown, 25 per cent; and to Famous Players, as proprietors of the Regent and also as the operating company, 37½ per cent. It is further agreed that no division is to take place until a reserve fund of $25,000 is created and maintained.

The rental of the Uptown is guaranteed by the other two parties to the agreement. Famous Players may, if it so desires, appoint a manager, or managers who shall be in actual charge of the theatres, or any one or more of them. It is also provided that notwithstanding that any theatre may be closed, rental therefor shall be payable and the pooled profits distributed in the same manner as if the theatre were open, and that neither party shall during the term of the contract acquire, assume control of, or be interested either directly or indirectly in any downtown theatre in Toronto not in existence at the time of the agreement without the written consent of the other parties.

Shea's Hippodrome is primarily a vaudeville theatre and it has been operated under a policy of showing moving pictures in connection therewith. It is a first run downtown house and has been operated under this policy continuously. Since entering into this agreement, Famous Players has acquired a 59 per cent interest in the capital stock of Shea's Amusement Company, which interest was acquired in 1928. It might be interesting to note that the directors of Shea's Amusement Company Limited elected on January 16, 1923, on the organization of that company, were Messrs. N. L. Nathanson, J. Shea and J. P. Bickell, who were shareholders in their own right and apparently not representing Famous Players (Evidence, p. 3398). Mr. Nathanson and Mr. Bickell sold their shares to Famous Players in 1928. Shea's Hippodrome has a seating capacity of 2,663.

Regent.—This theatre was acquired originally under the agreement of February 5, 1920, between Famous Players Lasky Corporation and Famous Players Canadian Corporation Ltd. by obtaining all the stock of Regent Theatres Limited, the owner of the theatre. It had been operated as a motion picture house for some years and was operated at the time of entering into of the agreement (Exhibit 17). Subsequently a legitimate stock company, the Cameron Matthews Players, occupied it, and thereafter it was open occasionally. The record of its operation is contained in Exhibit 225, and from this it will appear that from October 10, 1925, to May 29, 1926, it was continuously showing motion pictures. From that date on it has only been open for pictures a short time and during the subsequent period has been rented from time to time principally to a stock company. It has, however, not been open for any purpose of public entertainment since May 12, 1928. The Regent has a seating capacity of 1,475.

Shea's Victoria.—This was originally an exclusive vaudeville house. This theatre was under lease from the owners, Shea's Theatre Company Limited, to Shea's Amusement Company Limited for ten years from August 30, 1926. It was operated from September, 1926, by the Vaughan Glaser Stock Company, to the fall of 1927, when it was taken over by the Cook Stock Company, who operated it until early in 1928 and was further occupied by another stock company until June 22, 1929. It was then closed until an engagement of the Dumbells for the weeks of February 8 and 15, 1930, since which it has not been used for theatrical purposes. It is now being operated as an indoor golf course under lease to L. S. Shapiro from November 1, 1930 (Exhibit 235). The seating capacity is 1,995.

Loew's Uptown.—This theatre is situated on Yonge Street near Bloor Street, and has a seating capacity of 2,975, being one of the largest moving picture theatres in Toronto, and was regarded until quite recently at least as a downtown first run house. Up till the fall of 1930 it enjoyed a very large patronage, being operated under a policy of stage attractions combined with motion pictures and having a large orchestra. The entertainment was under the supervision of Jack Arthur until the fall of 1930, when Mr. Arthur's entertainment and the orchestra were moved to the Imperial Theatre, control of which had been acquired by Famous Players. For a time the Uptown became a second run house, but is now again a first run (Evidence, p. 3161). This change in policy has had a very marked effect on the receipts of the Uptown, as is indicated by Exhibit 230, a comparative statement of the receipts of Uptown and Tivoli in Toronto for corresponding periods in 1929 and 1930, the receipts of the Uptown being less than a third of what they were under the former policy, whereas the receipts of the Tivoli have been less but not to any such extent as those of the Uptown.

Notwithstanding the closing of the Regent and Shea's Victoria, and the change in policy of the Uptown, the operations of this joint enterprise have been financially successful.

30. *B. & F. Theatres Limited, Toronto*

(1) *La Plaza.*
(2) *Christie.*
(3) *Mavety.*
(4) *Gerrard.*
(5) *Teck.*
(6) *Beaver.*
(7) *York.*
(8) *Classic.*
(9) *Danforth East,*
  (Afterwards called *Grover*).
(10) *Danforth.*
(11) *Eastwood.*
(12) *Prince of Wales.*
(13) *Parliament.*
(14) *Crown.*
(15) *Photodrome.*
(16) *Victoria.*
(17) *Crystal.*
(18) *Wonderland.*
(19) *Greenwood.*

All in Toronto. The first four above mentioned were contributed by B. & F. under the agreement dated December 18, 1926 (Exhibit 91), between Famous Players and Bloom and Fine, under which B. & F. Theatres Ltd. was incorporated and took over the management and control of the theatres therein named. The theatres numbered 5 to 9 inclusive were similarly contributed by Famous Players, and B. & F. Theatres Ltd. commenced operations about the end of 1926 with these nine theatres.

(10) *Danforth.*—This theatre (Evidence, p. 1130) was not included in the original agreement (Exhibit 91) but was under lease to Messrs. Bloom and Fine and one Sam Sternberg, and turned into B. & F. Theatres Ltd. almost simultaneously with the entering into of the agreement (Exhibit 91). This theatre must be distinguished from that referred to in the agreement as the *Danforth East,* which afterwards became the *Grover* (Evidence p. 1131).

The agreement refers to the Danforth Theatre as then being erected, lease of which is to be assigned to, or otherwise vested in the new company. The Danforth is a first run in the zone and has a seating capacity of 1,360.

(11) *Eastwood* (12) *Prince of Wales.*—These theatres are controlled by B. & F. Theatres Ltd., under agreement dated March 24, 1928 (Exhibit 99) between B. & F. Theatres Ltd., the Eastwood Theatre Ltd., Danforth and Woodbine Theatre Ltd., and Famous Players. This is in reality a pooling agreement. It recites that B. & F. Theatres Ltd., is lessee of the *Grover, Gerrard* and the *Classic* theatres, and the Eastwood Theatre Ltd., the owner of the *Eastwood,* and the Danforth and Woodbine Theatre Ltd., the owner of the *Prince of Wales,* and that the arrangement to be entered into so far as the *Classic* is concerned is to be limited to the term of the present lease of that theatre, and the agreement is subject to the provision that none of the parties will on the expiry of the lease of the *Classic,* if the pool is then still in force, take any lease or renewal thereof, except for the benefit of the pool. The agreement provides that the theatres mentioned shall be operated under a pooling agreement in which their receipts and expenses shall be pooled, and the profits divided. The pool is not to be affected or dissolved if the Classic is no longer included at the expiry of the lease

B. & F. Theatres Ltd. is to manage and operate the theatres and Famous Players is to do the booking after consultation with Mr. W. A. Summerville. Apart from the bookings and control of the policy, B. & F. Theatres Ltd. is to be responsible for the management of the theatres. In case of a difference of opinion in regard to the policy and management, a committee is to be appointed to decide any question.

The total receipts are to be deposited in a bank account to be opened by B. & F. Theatres Ltd., in trust, under the name of the Danforth-Gerrard Amusement Co., which was simply a banking name, and the rentals and operating expenses are to be paid out of this account. Cheques drawn on the above mentioned bank account are to be signed by a representative approved by Famous Players, and a representative approved by the Eastwood Theatre Ltd., and Danforth-Woodbine Theatre Ltd. After $2,000 is accumulated and maintained in the bank account, $250 per week is to be paid to the Eastwood Theatre Ltd., and $300 per week to the Danforth-Woodbine Co., and $516 per week to B. & F. Theatres Ltd., in connection with the respective theatres of each, and each company is to pay its own overhead. After operating expenses and the above overhead allowances are paid, any sum in the bank account in excess of $2,000 shall be divided 50 per cent to B. & F. Theatres Ltd., 25 per cent to the Eastwood Co., and 25 per cent to Danforth-Woodbine Theatre Ltd.

The committee referred to above is named and consists of Mr. N. L. Nathanson, Famous Players, Mr. W. A. Summerville, representing Danforth-Woodbine Theatre Ltd., Mr. B. E. Knight, representing Eastwood Theatre Ltd., and Mr. S. Bloom, representing B. & F. Theatres Ltd., with power to substitute, and in case of deadlock, Lawrence Solman, if alive, shall be called in; failing Solman, Jules Bernstein of Loew's Theatre, Toronto, is to give the casting vote.

The pool is to take over existing picture contracts, but all future contracts are to be made only with the consent and approval of Famous Players, who, after consultation with Summerville, decide as to what policy is the best for the combined theatres, and their decision shall be final and acted upon subject as aforesaid.

Provision is made also for the closing of any theatre, if such is deemed to be in the interest of the pool.

It is also provided that the management of the combined theatres may rent such other theatres as may be in the zones or vicinities of the theatres covered by the agreement, and may operate such other theatres or keep them closed. It is indicated in this connection that there is at present in mind the *Greenwood* and the theatre which has recently been built in opposition to the *Grover* on Danforth.

Famous Players guarantee the due performance by B. & F. Theatres Ltd., of their responsibilities and covenants under this agreement.

The *Eastwood* and *Prince of Wales* theatres are both being operated under this agreement. The Eastwood has a seating capacity of 905 and the Prince of Wales a seating capacity of 975; both are fourth run theatres in Toronto.

At this point it might be well to refer to the evidence of Mr. William Selby James, commencing on page 4584. Mr. James on page 4597 states that, as the lessee and operator of the *Greenwood* theatre, he was approached by a man named Knight, in the employee of Mr. Summerville, who had been in control of the Eastwood and the Prince of Wales theatres, and who is mentioned in the agreement (Exhibit 99), and who signs that agreement on behalf of the Eastwood Theatre Ltd., and the Danforth-Woodbine Theatre Ltd., together with Mr. Knight, who appears to have been Vice-President of the Eastwood Company, and Secretary Treasurer of the Danforth-Woodbine Theatre Co., and that Mr. Summerville also came to him and suggested that he meet Messrs. Bloom and

Fine and come to some arrangement with them, and that subsequently Mr. Summerville came to see him about the difficulty of getting pictures, saying,

> "that Famous Players had everything bought up; that it was only running my head against a brick wall, as he had had the same difficulty; and he had never been so well off in his life as since he had been with the Bloom and Fine; or the Famous Players."

Mr. Summerville was present at some of the hearings, including the hearing at which this statement was made, and has not denied it.

(13) *Parliament* Theatre.—This theatre is situate on the east side of Parliament street, just north of Gerrard street, and a few blocks south of the *Carlton* theatre, owned by an independent named J. J. McCabe, through his company called the Carlton Amusement Ltd. There is also a small theatre operated by Louis E. Fiegehen and called the *Eclipse,* with 596 seats, on the east side of Parliament street south of Gerrard, and a theatre called the *Blue Belle* with 613 seats which is operated by Manuel Gebertig. It is situated south of Dundas street. The real competition, however, is between the Parliament and the Carlton.

It might also be noted here that Parliament street runs into Bloor street a short distance north of the Carlton, and that the Bloor Street viaduct leading to Danforth avenue, intervenes between the Carlton and Parliament theatres and the *Danforth* and *Palace* theatres on Danforth avenue.

The site for the Parliament Theatre was acquired by B. & F. Theatres Ltd., from Grace M. Dunovan on July 1, 1929 (Evidence, p. 1124). B. & F. built the theatre and it was opened late in 1929 and has been operated continuously by B. & F. Theatres Ltd., and the profits are equally divided between B. & F. and Famous Players, according to their respective stock interests in B. & F. Theatres Ltd.

(14) *Crown.*—The lease of this theatre was acquired by B. & F. Theatres Ltd. from Horace P. Redway, the owner and former proprietor of the theatre, on March 10, 1930, to run for a period of ten years. It has a seating capacity of 861 seats and is located at 591 Gerrard St. East near the corner of Broadview; its nearest neighbours are the *La Reta,* on the corner of Gerrard St. and Pape Ave.; the *Broadview,* on Broadview Ave. south of Gerrard; the *Teck,* near the corner of Queen and Broadview; and the *La Plaza,* near the southwest corner of the same streets.

This theatre is owned by Mr. Horace P. Redway, whose evidence begins at page 4952, and he leases the theatre to B. & F. Theatres Ltd. The theatre was opened in 1916 and was a first run in its zone until the Palace theatre was built, when it was required to run pictures after that theatre. Mr. Redway states (Evidence, p. 4956) that "as the chain theatre increased its number in my district, so I found that my run of pictures gradually got further back and further back"; and from his statement on page 4974 he appears to have got back to the position of fifth or sixth run.

On page 4957 Mr. Redway states:

> "Well, my experience was, as I told you a moment ago, that when the theatre was first in operation my contracts all called for the first run east of Yonge Street. Then the Palace was built and I got second. Then the Danforth was built and I got third. Then the B. & F. circuit took charge, I believe, of the Plaza first, I think, and, closely following that, they took charge of the Teck—then I had to follow those as well, which practically made my run about the fifth run, whereas I used to get first, and it seemed that every time I would go to get pictures, of course the pictures were not available for my house."

He states further that this applied to all the exchanges except the small ones such as De Luxe.

On page 4985, Mr. Redway states that he leased because he had to, as he could not make any money "because the pictures, as I got them would not bring it into the box office"; and on page 4988, "just simply built a fence around me and gradually pulled it in and pulled it in and pulled it in, till—well there was nothing left."

(15) *Photodrome* (16) *Victoria.*—By an agreement dated March 31, 1930, Samuel Ulster, the lessee of these two theatres, agreed with B. & F. Theatres Ltd. that they should be operated for the benefit of both parties to the agreement, as partners in equal shares, for one year from September 1, 1930. The profits and losses were to be divided equally between Ulster and the company. The agreement provides that the leases of the two theatres are to be held in trust for the benefit of Ulster and B. & F. Theatres Ltd. and that the theatres shall be operated by the last named company. Ulster shall be employed as manager at a weekly salary of $150. Ulster is limited not to bind the partnership in any obligation in excess of $50 without the consent in writing of the company.

Clause 13 provides that neither the company nor Ulster will take, offer or become interested in the operation of the *Colonial* theatre, *Variety* theatre, *Red Mill*, the *National* theatre or the *Peter Pan* theatre, without the consent of the other party.

Clause 15 provides that the company may at September 1, 1931, continue to participate in the operation of the two theatres for the balance of the terms of the leases. The lease of the Photodrome was for ten years from July 1, 1926, and the lease of the Victoria for ten years from February 1, 1929, and in the event of the company exercising its right to further participate in such operations, a new company shall be incorporated, of which half of the board of directors shall be nominees of Ulster and the other half of the company; in which neither parties shall transfer shares without the consent of the other party.

B. & F. apparently acquired control of these two theatres without any capital expenditure, its sole contribution, apparently, being direction of the policy of the theatres.

The Photodrome is on Queen Street just west of Yonge Street and the Victoria is on Yonge Street between Carlton and Bloor Streets. The Photodrome is a small theatre with a seating capacity of 391 seats and the Victoria has 644 seats. Both are subsequent run houses, I should say pretty well down on the list in the city and in the zone. They are both in the downtown district of the city and are not regarded as being in the same zone as the Tivoli and other first run houses.

(17) *Crystal* Theatre.—This theatre is situate on Dundas Street West in the city of Toronto and is fairly close to the *Beaver* and the *Mavety* theatres, both B. & F. houses.

EVIDENCE OF BEN FREEDMAN AND R. J. BRUCE

Mr. Ben Freedman, (Evidence, p. 5172) says that he acquired the Crystal theatre in May 1927, by lease from Mr. R. J. Bruce, that the first day he went into the theatre he had a conversation with Mr. Bloom who told him "what kind of a fool he thought I was"—to take over the Crystal theatre under the circumstances that existed in the Junction at that time (Evidence, p. 5174). "Well, because the situation there of getting pictures was so hard, I guess he thought I was a fool on that account."

Mr. Freedman had learned that Bloom and Fine had been dickering with Mr. Bruce, the owner of the theatre, before Freedman had rented it. About a month later Mr. Bloom came to Freedman (Evidence, p. 5177) and said he would have a proposition in the near future "that would be beneficial to both of us." Freedman states that Bloom came later and said:

> "I am now ready to speak terms to you—if you are willing to come in with us on a fifty-fifty basis I will make you a favourable proposition.—We will close

> up the Mavety and pay the rent out of the Crystal to keep the Mavety closed, and then we would split the profits of the Crystal theatre between him and me, and I would get a salary for managing the theatre. So I asked him what he had to offer for me to give them all that out of the Crystal theatre. He said that what he had to offer was that by coming in with him I would be able to obtain pictures that were desirable for the house, which I was not at that time able to get, and he could purchase pictures at a much lower rental than I could; which would mean that moneys saved on the buying of the film would really take care of the extra expense attached to the Crystal theatre.—My experience of getting pictures was a very, very difficult one—one of the worst that I knew of at that time. I went to the various exchanges to get pictures and there wasn't anybody that had any pictures available for me with the exception of F.B.O., which is now called R.K.O. I bought their program; I think at that time it was about sixty pictures they had.—I couldn't get any other pictures at all—this was in June, 1927."

Mr. Freedman states that he bought 41 pictures from Columbia. On page 5182 he says, "There were no other pictures for sale." The pictures he bought apparently proved insufficient to "stay in the Crystal and get a living; so I took in vaudeville."

On page 5183 Mr. Freedman says:

> "The early part of 1928 he (Bloom) came to me one Sunday when they were rehearsing in the theatre—'Well, what are you going to do for next season. This season you were able to get F.B.O. and Columbia pictures to operate with'—He said 'I feel quite sure that when the next buying season comes around that you are not even going to be able to get those pictures—you might better decide to come in with us or be out altogether!"

About a month later Freedman was invited to Bloom's house and he said:

> "That it was drawing near to the end of the season and I had better make up my mind then or be out when the season did come on—out of the theatre. So I consented that Sunday to go in with him on a fifty-fifty basis. Came down to his office the following morning and he had some papers drawn up by his lawyer, and I took them from him to my lawyer, and my lawyer thought I would be very, very foolish did I go in with him on this basis, and the way these papers were drawn up. So I phoned Mr. Bloom and told him that the deal was off. I guess two or three weeks later than that he sent his uncle to my place—Mr. Tinkleman. I think he was the manager of the Beaver Theatre at that time."

From page 5185 it appears that Freedman met Bloom and some further discussion was had, when Freedman refused to go in on a fifty-fifty basis. About a week later Freedman went to Bloom's office on his invitation, when Bloom asked him how much money he wanted for his lease, whereupon Freedman asked $10,000. Bloom offered $7,500, which Freedman agreed to take.

In the meantime Freedman had tried to get some pictures from Universal, Metro-Goldwyn-Mayer, and Pathe, without success. He went to see Bloom the morning after his agreeing to take $7,500 and was taken to Mr. Bragg's office, whereupon Mr. Bragg informed him that Mr. Nathanson was willing to give $5,200 for the lease. This Mr. Freedman refused, and attempted to carry on his theatre, and tried to get pictures from F.B.O., for the following season, and did get some sixty pictures.

He went to see Mr. Rosenfeld of the Columbia who asked him why he did not go through with the deal with Famous Players, and upon Mr. Freedman's explaining to him what had happened, Mr. Rosenfeld went to Mr. Bragg's office with Mr. Freedman, whereupon Bragg said the best they would do was $5,200. On the way back to Mr. Rosenfeld's office, Mr. Freedman asked Rosenfeld what he was going to do about next season's pictures, whereupon Rosenfeld said that " if you don't get together with B. & F., I will help you out."

About ten days later Bloom asked Freedman to come to his office, and he went, whereupon a deal was made for the sale of the lease at $6,000. Mr. Freedman says that had he been able to get the pictures that were necessary to carry on the Crystal, he would not have sold at any price, as he was making $5,000 per year. The lease was sold in June, 1928.

On page 5210 Freedman states that Bloom said to him:

> "Well, Benny,—we are starting to clean up situations, and we might as well start with you."

On page 5211 Mr. Bloom is reported as saying:

> "I want you to come in with us, turn your theatre over to us on a fifty-fifty proposition. We will assure you of all the pictures you want, pay you $65 as manager and split the profits fifty-fifty."

Freedman further states that he asked Mr Bloom, "What have you to offer me as a partner", to which Mr. Bloom replied "Our protection"; to which Freedman replied "Oh, I don't need your protection." Whereupon Bloom said, "Well, you will need it. We are going to make it impossible for you to buy any films." Whereupon Freedman said "I don't know whether you can or not." Bloom replied "I am warning you. If you don't come in with us, and find yourself without pictures to operate, I don't want you to forget that I was here and warned you." This was in October 1927.

On page 5212, speaking of a meeting on Sunday in the spring at the theatre, Freedman says that Bloom said:

> "I am here to talk business right from the heart.—You have got to come in with us or we are going to force you out of business, and there aren't any two ways about it. I would not talk with you like this if there were any witnesses around."

Mr. Freedman, page 5215, further states that on one occasion in May 1927 Bloom said to him:

> "I am going to buy up every picture in the market; all I have to do is to write to the exchanges and get them."

There is evidence also that by, advertising and the reduction of prices, things were made difficult for Freedman in the operation of the Crystal.

In this connection it might be of importance to note a copy of a letter in Exhibit 165, dated May 5, 1927, from Clarence Robson of Famous Players to J. P. O'Loghlin of Fox Film Corporation, in which he says:

> "Dear Jim,—I understand that in the very near future a change of the picture situation may be developing in the West Toronto zone, and before you dispose of any of your product whatsoever in that zone I wish that you would personally take up the matter with me."

This same letter went to all of the exchanges (Evidence, p. 5222).

After acquiring the lease, B. & F. Theatres Ltd. operated the theatre until they surrendered the lease to the owner, Mr. R. J. Bruce, on January 31, 1930 (Evidence, p. 5229).

Mr. Bruce gave evidence from which it appears (page 5238) that he remodelled the theatre in the summer of 1930, and put in sound. He in turn was approached by Mr. Fine and asked to come to the office of B. & F., which he did. He was asked if he would rent his theatre, and a proposition was made but not accepted. Certain representations were also made by Mr. Fine to Mr. Keith Bruce, a son of Mr. R. J. Bruce, who gave evidence, shortly after this conversation.

The prices of the Mavety were reduced from 30 cents to 20 cents, and later on the Beaver dropped their prices from 30 cents to 22 cents, whereupon Mr. Bruce dropped his price from 35 cents to 25 cents. The result is not yet developed.

Mr. Bruce, on page 5244, states that before he rented to Freedman, Bloom and Fine had been trying to rent his theatre, and that they took him down to their office and even up to the office of Famous Players, where he met Mr. Bragg, Mr. Robson and others. He wanted $400 a month and they tried to beat him down.

> " Mr. Robson said I had better allow them to have it, 'because,' he says, 'you are going to find it very hard to get pictures.... I can see the writing on the wall right now, that you are going to have difficulty in getting pictures later on.' "

At the top of page 5249, Bruce, in answer to a suggestion from Mr. Starr, counsel for the Motion Picture Distributors and Exhibitors of Canada (the Cooper organization) that Bloom and Fine seemed to control the business from the way they talked, said:

> "Apparently they do, from what the exchanges tell you when you go in there. They just laugh at you when you ask them for a picture—just simply laugh at you, at the idea of you coming in and talking of wanting a picture from us."

On the same page, in answer to Mr. Starr, he said: "Yes, I went to Warner's, and was told by Warner's, their manager—myself and my son—that they hadn't any pictures." They did not go to Famous Lasky " because we understood they had no pictures for sale; they belong to Famous Players."

The Crystal theatre has a seating capacity of 563 seats, and is still being operated by Mr. Bruce.

(18) *Wonderland.*—This theatre was a small theatre in the Junction District. It came into the B. & F. chain about the same time as the Crystal. It was operated by B. & F. Theatres Limited only for a short time and is not now in operation. (Evidence, p. 1121.) The theatre has been turned into a store (Mr. Robson's evidence, p. 2417).

(19) *Greenwood.*—This theatre is situate on Gerrard St. East, just west of Greenwood Avenue, the lease having been acquired from Charles Rotenberg, Hyman Rotenberg and Jack Wingate on September 25, 1928. (Evidence, p. 1110). The theatres in the immediate neighbourhood are the Classic, then part of the B. & F. chain; the Eastwood, then and still part of the B. & F. chain; and the Bonita, an independent house operated by Harry Lester and having a seating capacity of 428.

Prior to its acquisition by B. & F. Theatres Limited it had been operated by one W. S. James during 1927 and 1928. On its acquisition by B. & F. Theatres Limited, they operated it until October 17, 1930, when it was sublet to one A. Staniewiski (Evidence, p. 4943). Mr. Staniewiski says that he bought the theatre for $1,500 and that three or four days afterwards he found on the other side of the same street that they had opened another theatre that had been closed called the Classic. Objection was made by Mr. Staniewiski to the price and finally the deal was closed at $1,200.

From page 4949 it appears that he got pictures for three or four days on a percentage basis, but was told that this was only a privilege for B. & F. Theatres Limited, because

> " B. & F. got many houses. B. & F. has got more money than I did and they can't give me on the percentage division. It should be paid straight price, as well as the other people pay."

He further states that he was refused pictures, the contracts for which he had taken over from B. & F. Theatres Limited, on the percentage basis on which B. & F. Theatres Limited had purchased them.

On page 4950 Mr. Staniewiski says:

> " I want to tell you about my experience about that, why I lose that money, because I am the shortest owner of the Greenwood. I was only just about five weeks there. I can't stay any longer."

After Staniewiski abandoned his lease, the theatre was fixed up and has, I understand, been leased to one Allan Liscombe, who is now operating it.

EVIDENCE OF W. S. JAMES

Mr. William Selby James was the lessee of this theatre, as already stated, in 1927-8. He says, on page 4585:

> " The very first week after I took the theatre I was out to purchase pictures and I went to the various exchanges, and I was met with a refusal everywhere, with the exception of the De Luxe and one or two of the small exchanges. I was

> told that the whole of the product had been purchased by, or held for, the Famous Players. I may say that I had a Famous Players' house opposite, or almost immediately opposite me, and another one within a quarter of a mile."

These were the Classic and Eastwood. On page 4586 he says:

> "I tried Famous Players, United Artists, Universal; as a matter of fact, I tried every exchange."

Mr. James apparently refused to take over the pictures that his predecessor had contracted for at the price he had agreed to pay and notified the exchanges to that effect, and he was brought before the Film Board of Trade. He finally saw Colonel Cooper, who arranged to obtain a few pictures for him from Regal Films Limited, which were the pictures he had already rejected. On page 4588 he says:

> "I was determined I would not be beaten, so I started out with the small pictures. I gave people service, a clean theatre, and I had a measure of success. I had so much success that it put my opponents on the opposite side of the road on their feet, and they started to put some tricks over. They started running double bills (referring to the Classic) and they started giving candies away, and presents. . . . .Finally it got so serious I had to think of some other means. . . Then I started to put vaudeville on."

Mr. James was approached by a representative of the Operators' Union who required him to put on a union operator.

A stink bomb was exploded in his theatre by a man named Jenkins at a time when Mr. Bloom and Mr. Knight, the latter the Vice-President of the Eastwood Theatres Limited and Secretary-Treasurer of Danforth-Woodbine Theatres Limited, were in the theatre together. Mr. James says that the following day Jenkins was tried in the Police Court in Toronto, convicted and fined, and his fine was paid by Mr. Dentelbeck, the president of the Operators' Union and superintendent of equipment of Famous Players. Mr. James further says (Evidence, p. 4596) that it came out in Court that Jenkins was operating the booth of the Classic Theatre, and came over across the road from the Classic Theatre to the Greenwood on the occasion on which the bomb was thrown, and that two years later Jenkins was arrested on a perjury charge in connection with this matter at a time when he was working at the Greenwood Theatre, owned by B. & F. Theatres Limited.

It might be noted here that the theatres in which Summerville and Knight were interested joined the B. & F. circuit March 24, 1928. Mr. James also says that Mr. Knight approached him, and that Mr. Summerville also came to see him, and suggested that he meet Messrs. Bloom and Fine and come to some arrangement; that they proposed to pay him $50 a week to manage the theatre for them and that he should turn the theatre over to them and let them run it. Mr. James met Messrs. Bloom and Fine, but negotiations dropped because of Mr. James' unwillingness to break his contract with the Vaudeville Artists' Association. Following this Mr. James was sued by his landlord for rent, and in this connection he says (Evidence, p. 4600): "I was able to take all my accounts and cheques to Judge Denton and he found that I didn't owe a cent". Mr. James states that the landlords told him they had been forced to sue by Bloom and Fine, that they had been sent to Messrs. Bloom and Fine's lawyers, and that these were the lawyers who had brought the action.

Mr. James says also that at this time:

> "I found this bar if anything stronger against me, for getting pictures or anything. . . . I was only able to get those small inferior ones."

He then says that he resumed business in the ordinary way with vaudeville, but that a notice was put up in the office of Harris & Company, the vaudeville booking office, that any vaudeville artist appearing at the Greenwood Theatre would be refused work with the Bloom and Fine Circuit. He then says (page 4601) that Mr. Summerville came to see him again and he told Mr. Summerville that the only way that Bloom and Fine could get his theatre would be to buy it. Finally they agreed to do so and he closed out with them. He managed it for six months at their request and then left. After they purchased from him, the Classic was closed and they had no difficulty getting pictures. It will be remembered that when the Greenwood was rented to Staniewiski, according to his evidence, the Classic was re-opened.

On page 4602, asked why he sold out, Mr. James states:

> "I was so glad to get rid of it, I would almost have given it away after the trouble I had been having there."

In regard to Mr. Summerville, he says on the same page that Summerville spoke of

> "the difficulties of getting pictures—that Famous Players had everything bought up, that it was only running my head against a brick wall, as he had had the same difficulty, and he had never been so well off as since he had been with Bloom and Fine or Famous Players."

Mr. James was apparently an experienced moving picture man, as he had been in the business about ten or twelve years and was a licensed operator. He ran his theatre very economically, as he had a son and daughter to help him, and had to employ only the operator, one usher and the pianist.

Mr. James gave his evidence before me on February 6, Mr. Freedman on February 11. Bloom and Fine were both present during at least part of these sittings and subsequently, on February 12. Mr. Willoughby of the McMaster firm appeared and stated that he was counsel for Messrs. Bloom and Fine and asked for the opportunity to give evidence in relation to the statements of these two witnesses. He was told that an opportunity would be afforded and was subsequently notified on several occasions, as I am informed by counsel for the commission, that the opportunity was open, but, though Bloom and Fine were subsequently present at the hearings on several occasions, no evidence was tendered by them or by Mr. Willoughby on their behalf.

In connection with the operations of Bloom and Fine, it is of some importance to note Exhibit 344, the first part of which is a memorandum, undated, which Professor K. W. Taylor, (Evidence, pp. 7191 and 7215), says was found by him in the files of B & F Theatres Limited, in a situation which indicated that this date was about May, 1927. The author of this document is not determined, but, in view of the uncontradicted evidence immediately above referred to, with which it so accurately jibes, there can be perhaps little doubt as to its author being one of two persons.

The document is as follows:

> "1. Gerrard Situation.—Classic, Gerrard, Eastwood, Venida, Greenwood and one other House, no name.
>
> In order to protect the Classic and Gerrard Theatre situation, I would recommend three changes in the Classic, double picture program, making approximately 332 pictures for the Classic, two run, of which we could pick 130 of the cream for the Gerrard, before we play them in the Classic, and then bring them back to the Classic. By doing that the Eastwood cannot follow the Classic and cannot follow the Gerrard on pictures which go back to the Classic. This will control the situation in that zone.
>
> "2. Junction Situation.—I would recommend three changes a week if pictures can be bought right in the Mavety Theatre. By that move we would absorb 448 pictures between the Beaver and Mavety, making it impossible for any of the opposition houses to follow us.
>
> "3. Grover and Danforth Situation.—I would recommend double picture program in the Grover, three changes a week, if the pictures can be bought right. By that move we would eliminate any possible chance of the Price of Wales and Gensler's house being able to follow us on pictures."

It will be noted that within a year and four months of the approximate date of this document, the Eastwood and the Greenwood had been acquired.

In regard to the second paragraph of the document, the Crystal and Wonderland were acquired, and, in regard to the third paragraph, the Prince of Wales had been added to the B & F chain. The location of the Prince of Wales Theatre was on Danforth Avenue, between the Grover and Danforth.

EVIDENCE OF BERT WAINWRIGHT

Before leaving the question of B & F Theatres Ltd., and the activities of Bloom and Fine, it might be well to refer to the evidence of Mr. Bert Wainright, which starts at page 4632, which has to do with the *Oxford* theatre, which is situate on Danforth Avenue, in Toronto, between the *Prince of Wales* and the *Palace,* and on the same side, *i.e.*, the north side of the street. Mr. Wainwright had a theatre called the Oxford, about 75 yards east of the present theatre, which he had opened on October 12, 1925. His present Oxford theatre was opened on February 20, 1929. Mr. Wainwright and his wife had been members of the theatrical profession for some years, and live close to Mr. Clarence Robson of Famous Players, and he and Mr. Robson appeared to be friendly. Mr. Robson is said to have remarked to Wainwright " if at any time you would like to relinquish your theatre and go back" meaning go back to professional life "and you want somebody to take over your theatre, see me before you see anybody else."

Just before Mr. Wainwright started to build his new theatre, Mr. Fine telephoned Mr. Wainwright and he says that he had in mind when Mr. Fine was on the phone that B & F had taken over several theatres, and he, Wainwright, said (Evidence, p. 4638):

> " Mr. Fine, if you want to get me into a pooling arrangement such as Billy Summerville went in with you, count me out, I am not interested in it at all."

There was some more conversation, and Mr. Wainwright was invited to Mr. Fine's office, in the Royal Bank Building, to which he went. On the way in he met Mr. Summerville, who said he would be back in a minute. This was on the day that the steam shovel was starting work on the New Oxford theatre, around June or July, 1928.

He met Mr. Bloom and Mr. Fine, and the latter said (Evidence, p. 4639): "Mr. Wainwright, we understand you are going to build a new theatre on the Danforth. We would like to know just what kind of theatre you are going to build". Mr. Wainwright explained that he was going into pictures exclusively, and wanted a larger theatre, and one which was more suitable to his clientele, and then Mr. Fine said: "I had better be plain with you, Mr. Wainwright,—Mr. Nathanson is against you building a new theatre up there, it don't sit right with him at all" (Mr. Nathanson was then General Manager of Famous Players) and he went on to say, page 4641, "I may as well be plain with you, that N. L. Nathanson won't stand for another theatre going up there".—"We will lay the cards on the table". Mr. Clarence Robson came in, and in the meantime Mr. Summerville had come up, and at the request of Mr. Robson, Mr. Wainwright says, he went over the same story with him. The telephone rang and Mr. Robson spoke, saying "Mr. Wainwright is here", after which Mr. Robson said, addressing Mr. Wainwright, "Bert, will you come upstairs and see Mr. Nathanson". They all went upstairs to Mr. Nathanson's office, and there were present Mr. Nathanson, Mr. Bloom, Mr. Fine, Mr. Summerville and several others of the staff. Mr. Wainwright's statement, on page 4642, is that Mr. Nathanson on that occasion said:

> " I understand Mr. Wainwright, you are contemplating building a new theatre. —Well, I must be frank with you—I must be plain with you and tell you about this. Danforth Avenue at the present time has more seats than any street of its

> size in America, and why should you build another theatre? These boys have been at me for weeks and weeks to stop you. I know, Wainwright, how much you were making to a cent in your theatre. I knew to a dollar what you made, but I didn't care about that. I told the boys themselves, 'Let the boy go along. He is earning a living but he is not getting rich on it.' You have been going on for three years and these boys, when they pooled the theatres, wanted to curb you, but I wouldn't do it because I was satisfied to let you go ahead, because I knew what you were making to a dollar. When you went into a new theatre, it is a different proposition. I have $300,000 tied up in the Palace Theatre and I am not going to have anything more drawn away from it. Your little theatre was drawing a little away from it and I was satisfied, but when you went into a larger theatre it is different; I gave you that much leeway, and that is the time I hollered 'Stop.' Look at Billy Summerville; I told him that if he put up a new theatre we would build another in opposition. Mr. Wainwright, you take my advice and stop building."

Mr. Wainwright was then said to have remarked:

> "How can I stop building, my steel is ordered, and my steam shovel starts in to-day. You can't stop this in ten or fifteen minutes, it takes preparations to get that. How can I stop building a theatre just on your say-so?"

Mr. Wainwright says that then Mr. Nathanson remarked,

> "My boy, your first loss will be your greatest. Think about it."

On shaking hands Mr. Nathanson remarked,

> "I want to give you credit for having the courage to come up here with me. A lot of other theatre owners would be calling me a lot of names."

On leaving Mr. Nathanson's office, Mr. Wainwright says (Evidence, p. 4645) that Mr. Summerville said:

> "Bert, think this over, think of me, when I was at the Prince of Wales theatre, they ran me to earth. I was getting the scum of the pictures. Think it well over and think about what Nathanson tells you."

Whereupon Mr. Wainwright said to Mr. Summerville,

> "Listen, Billy, because you got cold feet, that has nothing to do with me."

On page 4646 Mr. Wainwright says that Mr. Nathanson also said to him:

> "Mr. Wainwright, don't forget this. If this new theatre goes up, you are not going to have it as easy to get the pictures as you have before; I will see to that."

Mr. Wainwright, however, built the theatre and it is still in operation.

Mr. Wainwright evidently had a good deal of difficulty getting pictures. His evidence on page 4646 is that when the new theatre was opened, he applied for pictures for the theatre, but was given to understand that the pictures could not be transferred from that theatre to some other theatre. He kept the old theatre open until he played out his contracts with the Regal Exchange and others. A week or so before the new theatre opened he again applied for pictures to Regal Films, where he was informed that they were not selling pictures in that zone, that it was closed. This statement is said to have been made by Archie Laurie and is not denied by Mr. Laurie. He also applied to Famous-Lasky Film Service, and was informed by Mr. Jack Hunter, the branch Manager, as follows (Evidence, p. 4648):

> "Well, Bert, I understand the situation, but my hands are tied. There is a stoppage with you in this way, that we cannot sell any pictures to any theatre on the Danforth whose admission price is under 25 cents."

On page 4654, Mr. Wainwright says "Exchange Manager, Mr. Hunter, told me that was the instructions of Mr. Nathanson". Neither Mr. Nathanson nor Mr. Hunter was called to deny this statement.

On page 4648 Mr. Wainwright says:

> "I applied to the Fox people and had a contract drawn up satisfactory for the price of pictures and everything, with that exchange, and of course when I applied to them for the contract I was told that I could not get the pictures from them unless the price of admission was 25 cents."

I asked who told him that, to which he replied, the Branch Manager, Mr. Gehring.

Mr. Wainwright further says that he applied through Regal Films for Pathe pictures, and Mr. Charlie Ramage, then Branch Manager, said (Evidence, p. 4649):

> "Bert, I understand the position you are in, I realize that I can't stop from selling you pictures—but if you are paying $5 for a comedy I may have to charge you $75 for the same comedy, and I know that you would not pay it."

Whereupon Mr. Wainwright says he remarked, "All right Charlie, I won't worry you about it". Neither Mr. Gehring nor Mr. Ramage were called to deny these statements.

Mr. Wainwright was able through the good graces of some of the Exchange Managers to buy some pictures, such as United Artists, the Manager of which exchange said:

> "Hurry up, Bert, give me an order. There is an order going through to stop you. Give me a contract and it is closed."

Mr. Wainwright in his evidence stated:

> "That is how I got United Artists, and I bought them at a little more money than I otherwise would have paid."

He used to buy 100% of Pathe, Regal and also those of United Artists.

In cross examination by Mr. Johnston, on page 4657:

> "Q. But you have been steadily running ever since you opened the new theatre?
>
> "A. Yes. Understand, Mr. Johnston, up in my zone I run after everybody—The Palace, the Danforth, the Prince of Wales and the Grover. These are four Famous Player houses in my zone. Now at the best I could only get fifth run for the same pictures that I had been running. I couldn't expect to get better than fifth run.—No, no reason why I can't have a first run in my zone, any more than anybody else, but try and get it."

Again, on page 4659, he says:

> "I would like to see you get a picture ahead of him (B. & F.) in the Prince of Wales. What chance would I have of getting any picture which the Regal, Paramount or Fox would have, if they wanted it first? It is useless of me trying to get it first, because they won't give it to me."

Asked about Columbia, Mr. Wainwright says "that Columbia will give me the best they have if they are not taken up by Bloom and Fine". Asked about the other exchanges he said "The same thing applies all the way down the line to everyone, so far as applies to my case." Asked about United Artists he said "I get the same with the United Artists as the others", but he does not know what the condition is this year.

In further cross examination by Mr. Johnston, Mr. Wainwright intimated that he does not have an equal privilege of bidding for pictures with the other theatres in his vicinity.

31. *Other Famous Players' Theatres in Toronto*

Runnymede.—Is a freehold theatre belonging to Famous Players, it was opened June 2, 1927 and it is situate on Bloor Street West, near the corner of Runnymede Road, and quite near the extreme western limits of the city. It has a seating capacity of 1,500. Near it are the *Lyndhurst*, with a seating capacity of 499, independently operated; and the *Mayfair*, which is on James Street, having a seating capacity of 490, and also independently operated. It is a third run house in the city and first run in the zone.

Belsize.—By an agreement dated July 11, 1927, between Famous Players and Geo. W. Hunt, who owns and operates the Belsize theatre in Toronto (Exhibit 130), Famous Players acquired virtual control of this theatre and a booking fee of $50 per week, and after setting up a reserve fund of $5,000 the profits are to be equally divided. This is a typical operating agreement and contains the usual provisions in the contracts of this character, made by Famous Players. Famous Players acquired virtually a 50% interest in the profits without any capital expenditure, the sole consideration being the ability of Famous Players to operate and purchase pictures advantageously. According to the financial statement which I have seen, Famous Players have not received any profits from the operation of this theatre and its sole advantage has apparently been to increase its purchasing power and its influence with the Film Exchanges accordingly.

This theatre has been purchased by Famous Players from Mr. Hunt as of October 1, 1930. It has a seating capacity of 969 and is situate on Mt. Pleasant Road, near the north end of the city north of Millwood Road, several blocks east of Yonge Street. It has for opposition the *Hudson* theatre at 675 Mt. Pleasant Road, a theatre of 458 seats, operated by W. N. Armstrong and W. E. Forbes.

Bedford.—By an agreement (Exhibit 132) dated July 11, 1927, a booking agreement was entered into between the same parties and upon practically the same terms as contained in the agreement (Exhibit 130) in regard to the Belsize. The operation up to date has not been profitable and it has not even paid Famous Players the booking fee, which as of August 29, 1930, amounted to $3,350. The theatre is situate on Yonge Street a few blocks from the northern city limits and has a seating capacity of 954.

Both the Belsize and Bedford theatres are called fifth run theatres in Exhibit 6.

Imperial.—Control of this theatre was acquired by Famous Players in 1927 through purchase of the majority stock interest of Eastern Theatres Ltd., (see *ante* p. 20). It was then known as the Pantages, which is situate on Yonge Street, slightly above Queen, and is and has been a downtown first run theatre. It is operated under a vaudeville policy, and is the largest theatre in Toronto, having 3,442 seats.

In the latter part of 1930 the policy of the house was changed in that Paramount Publix "Unit Shows" were then, and have since been, performing in the theatre. The orchestra formerly at the Uptown was transferred to it and Mr. John Arthur, Musical Director of the Famous Players, was likewise removed from the Uptown to the Imperial. The stage presentations which up to then had largely contributed to the popularity of the *Uptown* were discontinued entirely, in favour of the "Unit Shows", above mentioned. The Imperial and a Famous Players theatre in Montreal are now apparently included in the United States circuit on which these shows are operated.

Loew's downtown theatre, and two small subsequent run motion picture houses, i.e. the *Red Mill* and *Variety*, are in the immediate vicinity. Loew's has a seating capacity of 2,088; the Red Mill 214, and Variety 425; all are independently owned.

Royce Theatre, Toronto.
New Hollywood, Toronto.
Major, St. Clair, Toronto.
Major, Roger's Road, Toronto.

These four theatres have been dealt with on page 60 *et seq* of this report.

32. *Summary of Toronto Theatres*

There are 92 theatres in Toronto. Of these, as shown in Exhibit 350, some 37 are owned, or controlled, or operated by Famous Players, its subsidiaries, and/or affiliated interests. The Famous Players' houses with the exception of

Loew's downtown theatre, and possibly the Madison, occupy the strategic positions, and are in a large measure first run. In the downtown section they control four out of five first run houses, and they also control the Regent and Shea's Victoria, which are, as indicated above, maintained closed.

In the 37 Toronto theatres controlled by Famous Players and its affiliations, there is a seating capacity of 45,763 out of the total in the city of approximately 70,743. The 37 theatres above mentioned do not include the Regent, Shea's Victoria or the Greenwood. The figure of 45,763 includes the seating capacity of the Regent 1,475; and the Victoria 1,995, but not the Greenwood, with a seating capacity of 443. In this approximation of the total seating capacity of the theatres in Toronto, the Greenwood is included, but not the Regent or Shea's Victoria. The figures for Famous Players Houses are taken from Exhibit 350 and of the total Toronto seating capacity from Exhibit 347.

Professor Taylor in making his preliminary investigation, prepared a map which was not filed as an exhibit, but which I transmit herewith as Appendix "A" to this report, on which the city of Toronto is divided by him into sixteen zones.[1] All the exchanges do not adhere to the one zone arrangement, but each has the city divided in its own way, for its own purposes, and it is therefore not intended that this map should be taken as accurately describing any particular system of zoning, but rather as a convenient graphic method, in a general way indicating the theatres which, from the whole of the evidence taken before me, might be said to compete, and it gives a very fair idea of the situation as between Famous Players' houses and those of the independents.

The legend adopted by Professor Taylor needs the explanation that the theatres spoken of as Famous Players' second run houses are not always second run in the zone, and that theatres spoken of as independent second run are not necessarily second run houses, but might be very accurately described as subsequent run houses, and in many instances they are fifth and sixth run in the zone. The theatres indicated as independent first run are, with the exception of Loew's downtown theatre, only first run in the zone. I am therefore not to be understood as adopting Professor Taylor's classification.

Zone 1.—This is the downtown zone and has already been dealt with.

Zone 2.—Comprises the *Bloor* and the *Alhambra,* both first run houses in the zone, operated by Famous Players, the *Madison,* an independent first run house in the zone, the *Hillcrest,* an independent house in the zone, and the *Walton,* a small subsequent run theatre.

Zone 3.—In this zone there are six theatres; the *Oakwood* and the *St. Clair* being Famous Players' first run, the *Christie,* the *Major, St. Clair,* and *Major, Roger's Road,* being subsequent run Famous Players' houses; and the *Royal George,* an independent subsequent run house. On the map the Major, Roger's Road, and the Major, St. Clair, are shown as being independent. They have, since the preparation of the map, been acquired by an affiliation of Famous Players.

Zone 4.—In this zone, Famous Players has a first run house, the *Parkdale* with 1,548 seats, and quite the leading theatre in the district.

Zone 5. —Toronto Junction District.—In Zone 5, the Famous Players have two houses, first run in the zone, the *Mavety* and the *Beaver.* Their opposition is Mr. Bruce's *Crystal* theatre, which has been fully dealt with *ante.* There are also two small subsequent run theatres in this zone.

Zone 6.—The Famous Players have the only first run theatre, the *College,* in Zone 6.

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[1] An outline map of the City of Toronto, based on the above map, is printed as Appendix A following the last page of this report.

Zone 7.—Famous Players' affiliations operate the *New Hollywood* on Yonge St., just north of St. Clair, and the *Capitol,* which are both first run houses, in the zone. The other theatres belonging to Famous Players, the *Bedford* and the *Belsize,* are subsequent run houses. The other theatres are also subsequent run houses. The New Hollywood does not appear on Professor Taylor's map.

Zone 8.—This zone embraces the downtown second run houses adjacent to Yonge street. The Famous Players have the *Victoria,* which is a first run in this zone.

Zone 9.—This is the Danforth avenue section from Broadview to the eastern city limits. The Famous Players have the *Danforth,* the *Palace,* the *Prince of Wales,* all of which are first run in the zone, and the *Grover* which is a subsequent run house. There are four independent theatres in this zone, all of which are subsequent run houses.

There are altogether on this map sixteen zones, and with the exception of Zone Fifteen, where there do not appear to be any Famous Players' houses, the above are fair illustrations of the situation.

An examination of the location of the different theatres, and an analysis of those which are first and subsequent run theatres, fairly establishes the fact that Famous Players and their affiliations occupy a dominant position in the theatre situation in Toronto.

33. *Summary of Ontario Theatres*

The Ontario situation may be thus summarized:

1. Famous Players and its affiliations control the only theatres in the following places:

Brantford
Brockville
Chatham
Cobourg
Cobalt
Cornwall
Fort William
Galt
Guelph
Haileybury
Kitchener
Leamington
Mt. Dennis
New Toronto
Owen Sound
Paris
Port Colborne
Preston
Sarnia
Smith's Falls
Stratford
Walkerville
Wallaceburg
Welland
Weston.

2. Famous Players and its affiliations control the first run theatres in the following places where there are other theatres:

Belleville
Kingston
Niagara Falls
Oshawa
Peterborough
Port Arthur
Sault Ste. Marie
Sudbury
Trenton
Windsor
Woodstock

3. Famous Players and its affiliations have the predominant first run theatres in the following places:

Hamilton
London
Ottawa
St. Catharines

4. In North Bay, the Royal, with 762 seats, competes fairly well with the Capitol, the Famous Players' house, having 1,435 seats.

5. In Toronto, the situation has been fairly well covered, Famous Players dominating the situation in the downtown zone, in which they have for opposition Loew's Downtown only, as against Famous Players' controlled houses, the Imperial, Tivoli, Shea's Hippodrome and Loew's Uptown.

Exhibit 349 is a list of towns and cities in Canada having a population of 2,500 or more, in which Famous Players or its subsidiary or affiliated companies do not operate theatres. It appears by page 2 of the exhibit the only city in Ontario in this category is St. Thomas, with a population of about 16,000. The town of Timmins, with a population of about 10,000 is also mentioned. Altogether there are in the list 57 places.

(D) PROVINCE OF QUEBEC

1. *Famous Players Montreal Theatres*

Capitol.—This theatre was an early acquisition of Famous Players and has been continuously operated as a first run downtown theatre in Montreal, it being the first theatre owned by Famous Players in that city. It has a seating capacity of 2,595 and is situate in a prominent location at 404 St. Catherine Street West.

Palace.—This theatre was acquired under agreement of June 6, 1923 (Exhibit 213) from Mr. Clarkson, trustee of the Allen Company, by acquisition of 6,387 fully paid common shares of $100 each out of a total issue of 12,500 shares of Allen's Montreal Theatres Limited, the then owner and operator of this theatre. It is listed in Exhibit 6, page 11, as being one of Famous Players' freehold theatres, with 2,602 seats, first run.

An agreement was made, August 27, 1923, between Allen's Montreal Theatre Limited and Famous Players, by which the Allen Company would sell and Famous Players buy the good-will of the business in lands, buildings, etc., for 1,750 fully paid 8 per cent cumulative preference shares of $100 each of the capital stock of a new company to be promoted and organized. This new company was the Palace Theatre Montreal Limited. By an agreement bearing date September 24, 1923, between the Palace Theatre Montreal Limited and S. E. Fowler, and an agreement of October 1, 1923, between Famous Players and S. E. Fowler and the Palace Theatre Montreal Limited, the Palace Theatre became the property of the Palace Theatre Montreal, Limited.

Famous Players (Evidence, p. 1519) operated this theatre for a number of years, but not very successfully, and in 1927, a sale was made under an agreement of December 14, 1927, set out in Exhibit 118, by which Palace Theatre Montreal Limited sold, and Famous Players bought, all the assets of the Palace Theatre Montreal Limited, the consideration being $175,000 in cash, which was sufficient to pay off the preference shareholders at par, and an undertaking on the part of the purchaser to pay the debts and liabilities of the vending company, and the costs and expenses of winding up of that company. This agreement was ratified and completed (Evidence, p. 1512) and from that date Famous Players became the owners of the theatre, which, situate on St. Catherine Street West, Montreal, has a seating capacity of 2,625 and is a first run downtown theatre.

Loew's.—The acquisition of this theatre by Mansfield Theatre Company Limited was accomplished under an agreement (Exhibit 28-B). It appears on page 21 of this report and the terms are fully set out on that page. It will be noted that Famous Players received 51 per cent of the common shares of Mansfield Theatre Company Limited. They now hold 55.15 per cent. According to Exhibit 6, the theatre has a seating capacity of 2,982. It is situate on St. Catherine Street West and is also a downtown first run theatre.

2. *United Amusement Corporation, Ltd., Chain*

(1) *Corona.*
(2) *Papineau.*
(3) *Plaza.*
(4) *Regent.*
(5) *Rialto.*
(6) *Rivoli.*
(7) *Rosemount.*
(8) *Belmont.*
(9) *Mount Royal.*
(10) *Strand.*
(11) *Lord Nelson.*
(12) *Napoleon.*
(13) *Amherst.*
(14) *Monkland.*
(15) *Westmount.*
(16) *Seville.*
(17) *Granada.*
(18) *Midway.*
—All in Montreal.
(19) *Granada*—Sherbrooke.
(20) *Park*—Verdun.
(21) *Royal Alexandra*—Lachine.

The above named theatres, numbered 1 to 6 inclusive, and No. 19, are freehold theatres operated by United Amusement Corporation Limited. The remaining 14 are theatres operated under lease or operating agreements by the same company.

On page 21 of this report the agreement (Exhibit 27-A) of September 9, 1924, is dealt with. It is sufficient to say here that by it Famous Players acquired 28.07 per cent of the class "A" shares of United Amusement Corporation Limited, and 28.52 per cent of the class "B" shares. All of the above theatres were then acquired as of September 9, 1924, except the Park, Verdun; Royal Alexandra, Lachine; Granada, Montreal; and the Midway, Montreal.

Park, Verdun.—Control of this theatre was acquired under an agreement dated November 1, 1927 (Exhibit 27-F) with the Standard Amusement Corporation, Limited (see page 22 of this report).

Royal Alexandra, Lachine.—Control of this theatre was acquired under an operating agreement with Lachine Amusements Limited.

Granada, Montreal.—This theatre was acquired under an operating agreement with Lord Nelson A. C. Limited.

Midway, Montreal.—Control of this theatre was acquired under an operating agreement with Midway Photo, Limited.

All of these are subsequent to the original agreement (Exhibit 27-A). The seating capacity of each theatre is set out on page 9 of Exhibit 6, and ranges from 600 to 1,723. They are all, with the exception of the Sherbrooke theatre and the Royal Alexandra, Lachine, neighbourhood or suburban houses, and have runs subsequent to the downtown runs.

Montreal (continued)

Imperial.—This theatre is one of the R.K.O. (Canada) Limited chain, which has 8 theatres in Canada, from coast to coast. The Famous Players interest in this theatre was first acquired in 1929 upon their acquiring 50% stock interest in the above named company, under an agreement dated May 29, 1929 (Exhibit 29), which will be more particularly referred to. The Imperial has a seating capacity of 1,915 and is run as a combination motion picture and vaudeville house. It is a downtown first run. The actual acquisition of the Imperial Theatre in Montreal was by lease through Bleury Investment Limited, and is practically contemporaneous with the above agreement. Bleury Investment Limited is a 100% subsidiary of Radio-Keith-Orpheum (Canada) Limited.

Montreal Summary.—By these acquisitions Famous Players became interested in 22 Montreal theatres with a seating capacity of 31,280. There are 37 independent theatres in Montreal, with a total seating capacity of 32,985. Included in the 37 independent theatres is His Majesty's, which is in reality a legitimate theatre and does not regularly show pictures. These figures appear in Exhibit 350. From this a fair conclusion is that in the City of Montreal the position of Famous Players and its affiliations is quite predominant.

In Exhibit 66 there is a statement of theatre operations in Montreal, sent out in answer to a questionnaire sent out by Mr. Sedgwick of Famous Players. This discloses that the following Famous Players' houses in Montreal are first run houses: Capitol, Imperial, Loews, Palace, Strand, and that the Princess and Roxy are the only independent first run houses.

This exhibit also discloses that the Broadway, an independent house, is a 26th run house, the Cameo 24th run, the Canada 27th run, the Canadian 29th run, the Center Palace 28th run, the Fairyland 22nd run, the King Edward 28th run, the National 30th run, the Passe-Temps 16th run, the Rex 21st, the Star 20th, Starland 28th, the Stella 23rd, and the Victoria 20th run, all independent theatres.

3. *Three Rivers*—Capitol and Gaietie

These two theatres are the subject of an operating agreement (Exhibit 89) dated September 16, 1929, between Famous Players, the "operating company", and Arthur J. B. Robert, called "the owner". It is rather an unusual agreement, but in effect provides that after payment of all expenses, including the salary to the managers of each theatre and other outgoings, and the creation of reserve funds for each theatre, the profits shall be divided equally between Famous Players and Robert. The agreement further provides that the managers of each theatre shall as to matters of policy be subject to the instructions of the operating company, subject to the approval of the owner, and that no change of policy shall be made without the written approval of the operating company. The owner shall also have the right to approve of any new local manager.

The agreement provides that Famous Players shall operate the said theatres, and each of them, but through the local managers, and shall book and supply films and other entertainments, as they may deem best and most advantageous, for five years from November 4, 1929, and for a further period of five years, at the option of Famous Players, upon the same basis as provided in the agreement, except that there shall be an increase in the rentals of the theatres of 15% over the present rentals.

The Capitol has a seating capacity of 1,224, and the Gaietie 526, and both are first run houses. (See Exhibit 6, page 13). Three Rivers has an independent house, the Imperial, with a seating capacity of 800, which has recently been erected. This city has a population of about 35,000.

4. *Quebec*—Capitol

This theatre was acquired by Famous Players May 25, 1929, by the acquisition of 100% of the stock of L'Auditorium de la Porte St. Jean Limitee, a holding company that held 100% of the capital stock of L'Auditorium Limitee, which last named company owns and operates the theatre. There is an agreement providing for the acquisition of this theatre, dated April 25, 1929. It is between Adelard Denis and J. Eugene Sampson of Quebec, and Famous Players.

The theatre was originally named the Auditorium, and has a capacity of 1,816 seats. There are 7 independent theatres in the City of Quebec, equipped with sound, and 4 still showing silent pictures. The Capitol is very much the largest theatre and is a first run house. The population of Quebec is about 124,000.

5. *Quebec Province Summary*

Pages 3 and 4 of Exhibit 349 contain a list of 97 towns and cities in Quebec, which have a population of 2,500 or more, and in which there are no Famous Players' houses. From this date it will appear that while Famous Players is not extending its operations in the Province of Quebec to the same extent that it has in the Province of Ontario, it still is a very large factor in the moving picture business in that province, especially in the City of Montreal where, as will be observed, it is interested in theatres having a seating capacity of 31,280 as against a seating capacity of 32,985 in the independents.. Its principal downtown opposition in Montreal is the Princess on St. Catherine Street, with a seating capacity of 3.200, as against the Capitol with a seating capacity of 2,595, the Palace with 2,592 seats and Loew's with 2,982 seats.

In regard to the Province of Quebec, it may be of some importance to quote the opinion of Mr. Clair Hague, Manager of the Canadian Universal Film Company, Limited, as expressed in a letter to his New York office, dated May 31st, 1929 (part of Exhibit 335), in which he says, referring to a list of Famous Players and Independent houses which he is enclosing:

> "I have listed only the towns of 10,000 and over due to the fact that towns under 10,000 cannot be gauged according to population, as a town of 7 or 8,000 in Quebec is really no better than a town of 3 or 4,000 in any other territory, as far as the percentage of theatre going public is concerned."

(E) Maritime Provinces

1. *Halifax*—Capitol, Casino and Garrick

Capitol.—The site for this theatre was acquired by Famous Players from the Eastern Trust Company, James M. Stewart, Halifax Academy of Music and the Y. W. C. A. of Halifax, the dates of acquisition ranging from July 3, 1929 to September 7, 1929. The old Majestic Theatre was formerly on part of the site. The theatre was erected thereafter and has just recently been opened. (See Exhibit 224, page 2). It has 1,980 seats and is the leading theatre in the city.

Casino.—An agreement, dated June 10, 1929, between Famous Players and R. J. Macadam, provides for the formation of the company to be called "Macadam Theatres Limited." The agreement recites that Macadam has been operating the Casino Theatre and owns personal property in connection therewith.

The agreement further provides that the Company shall enter into a contract providing for the booking of the theatre by Famous Players, the Company having the right to object to any film specified in a notice to be given by Famous Players. The Company is to have the right to select four feature films each year. The cost of the films to the Company is not to exceed the cost payable by small theatres in which Famous Players is interested in other places in Canada of like importance. The Company is to rent from Macadam the organ in the theatre, and Macadam is to transfer the projection equipment and personal property to the company; 50% of the entire issued capital of the Company is to belong to Famous Players and 50% to Macadam.

Famous Players agrees that it will not be interested in any theatre in Halifax, or within ten miles thereof, except the proposed Capitol Theatre, without offering to enter into a partnership with Macadam for the acquisition and operation thereof and that it will not enter into any booking arrangement with any theatre in Halifax, or within ten miles thereof, without consent of the company, except such theatres as Macadam may be offered and may not accept, or such theatres as may pursuant to the agreement be vested in the Company. Macadam agrees that he will not be interested in any theatre in Halifax or within ten miles thereof without offering to Famous Players to acquire and operate such additional theatre on joint account. Macadam is to be Managing Director of the Company. Famous Players is to pay Macadam $750 for the half interest in the property to be transferred to the Company.

The Casino has a seating capacity of 1,032 and has been operated continuously under this agreement. It is a first run theatre.

Garrick.—The lease of this theatre was controlled by William H. Dennis of Halifax, and by agreement dated December 9, 1929 (Exhibit 120) between him and Macadam Theatres Limited and Famous Players, it was agreed that Dennis and Macadam Theatres would cause a company to be formed called "Garrick Theatre Limited," to be incorporated with a capital of $24,000, divided into 240 shares of $100 each. The agreement provides that Dennis and Macadam Theatres Limited shall each subscribe to 20 shares of the capital of the new company. Dennis agrees to procure a renewal of the existing lease and to transfer the same to the company.

Article 5 of the agreement provides that the booking of feature pictures and other attractions shall be done by Famous Players and that on the incorporation of the new company, Dennis and Macadam Theatres shall cause the new company to enter into a booking agreement in the form attached, marked Schedule "A". This is an agreement between Garrick Theatre Limited and Famous Players for the booking of pictures for this theatre by Famous Players, and was apparently executed on January 14, 1930. As Dennis and Macadam are equally interested in Garrick Theatre Limited, Famous Players' interest in the Garrick Theatre is its one-half interest in Macadam Theatres Limited, and the booking agreement.

The Garrick is a second run house and has 725 seats. There are four independent houses in Halifax, the Community with 600 seats; the Orpheum with 900; the Imperial with 600, and the Scotia with 600 seats. The population of Halifax is about 58,000. The operations of the Garrick have been quite profitable.

2. *Sydney, N.S.*—Capitol Theatre

This theatre was formerly known as the Palace Theatre and on July 9, 1929, Famous Players entered into an agreement (Exhibit 129-A), with the owner and operator, Daniel P. Macdonald, whereby Macdonald agreed to reconstruct the theatre, adding a considerable seating capacity, at an expense of about $35,000 and whereby Northern Electric sound equipment should be installed, half to be paid by each of the parties, and whereby Famous Players are to book all attractions to be presented in the said theatre, and to select pictures and other entertainments for presentation therein. Macdonald exercises the right, if dissatisfied with the price of any picture, as being unfair and unreasonable, to make objection, whereupon Famous Players shall if possible rearrange the selection, and endeavour to revise the price to meet the views of Macdonald. The agreement also contains the usual provisions, whereby Famous Players do not guarantee the results, and are not responsible for the failure of any person to perform any contract or arrangement entered into. Macdonald agrees that he will not present or permit to be presented or shown in the said theatre any entertainments or films, save such as have been contracted for, booked or selected by Famous Players, as in the agreement provided. Out of the gross receipts there are to be paid the usual operating expenses as provided in the agreement, including repairs up to $100 and a booking fee of $50 to Famous Players, and a salary of $50 per week to Macdonald, also to pay Macdonald $150 per week in lieu of rent; to accumulate and maintain a reserve of $3,000. After payment of the above, and establishment of the reserve, the profits are to be divided between Macdonald and Famous Players in equal shares. Macdonald is to make all repairs above $100, and betterments.

Famous Players agree not to book for or become interested in, as proprietor or operator, directly or indirectly, any other theatre in Sydney without the consent of Macdonald; and Macdonald entered into a similar agreement. It is further provided that if either party has an opportunity of becoming interested in another theatre in Sydney, the parties are to have an opportunity to become interested in such theatre equally. The agreement is for a term of five years, from the beginning of the showing of sound pictures, with the provision for the extension for a further term of five years.

Exhibit 129-B is an agreement dated May 22, 1930, between Famous Players and Daniel P. Macdonald, reciting the former agreement, and more clearly defining the position of Macdonald, as local manager of the theatre, and containing this provision:

> "It being agreed between the parties that the requirements of the corporation in respect of matters of policy shall from time to time be complied with and conformed to."

The Capitol is a first run theatre and has a seating capacity of 1,087. The independent theatre is the Strand with a seating capacity of 689, operated by J. Nathanson. Sydney has a population of about 22,500. The operation of the Capitol Theatre has been profitable.

3. *St. John, N.B.*—Capitol Theatre—Rialto Theatre

Capitol.—Famous Players' interest in this theatre was acquired in September, 1929, by acquisition of stock (50 per cent of Radio-Keith-Orpheum, Canada, Ltd.) The lessee thereof is the Maritime Theatres Ltd. The theatre has a seating capacity of 630 seats and is first run in St. John.

Rialto.—This theatre is operated jointly by Radio-Keith-Orpheum, Canada, Ltd., with F. G. Spencer Limited. It was acquired subsequent to the establishment of the R.K.O. chain in the first half of 1929. It has 985 seats and is first and second run in St. John.

These two theatres will be referred to more specifically when dealing with the R.K.O. aforesaid. There are five independent theatres in Saint John, with seating capacities of 350 to 850 seats.

It is to be remarked that Famous Players did not engage in the theatre business in the Maritimes until 1929.

(F) PROVINCE OF MANITOBA

1. *Winnipeg*—Capitol, Metropolitan, Osborne, Tivoli, Winnipeg, Arlington, Wonderland, Crescent, Gaiety and Playhouse Theatres

Capitol.—By the agreement of February 5, 1920, Famous Players acquired from the Famous Players Lasky Corporation, through the Canadian Paramount Corporation, Ltd., certain vacant property in Winnipeg upon which was subsequently erected the Capitol Theatre (Evidence, p. 33). Mr. Bragg (Evidence, p. 443) states that this theatre is owned by Famous Players, was formerly operated by them, and is now leased to Radio-Keith-Orpheum, Canada, Ltd. The agreement in reference to the formation of R.K.O. Canada Ltd. (Exhibit 29), dated May 29, 1929, between Famous Players and Radio-Keith-Orpheum Corporation, a Maryland corporation with head office in New York, provides (Article 8) that Famous Players agrees to use its best efforts to procure a lease of the Capitol Theatre in Winnipeg, with its contents, for a period of twenty years from September 2, 1929. The theatre has a seating capacity of 2,093, and has been operated since 1929 by R.K.O. Canada Ltd. It is a first run house situate on Portage Avenue, near Main Street.

Metropolitan.—This theatre was acquired by the agreement (Exhibit 213) of June 6, 1923, between Famous Players and G. T. Clarkson, trustee in the Allen interests, by the purchase of preferred and common shares of Allen's Winnipeg Theatre Ltd. The theatre is now apparently owned by Metropolitan Theatre, Winnipeg, Ltd., in which Famous Players now have a 5·17 per cent interest in the preferred stock and 75·35 per cent in the common stock (Exhibit 6, p. 7); and is leased to Famous Players, who operate the theatre. It has 1,799 seats and is a first run theatre.

Osborne and *Tivoli* Theatres.—These theatres were acquired by Famous Players in September, 1929, by acquisition of 50 per cent of the capital stock of Kershaw Theatres Ltd.

The theatres are owned by Osborne Theatres Ltd., in which the Kershaws, parties to an agreement of January 24, 1929 (Exhibit 34), hold certain shares, and by which they and Famous Players agreed to incorporate a new company, called the Kershaw Theatres Ltd., with a capital of 4,000 shares, no par value. The Kershaws agree that the Osborne Theatres Ltd., will lease the two theatres and contents to a new company, forthwith, upon the incorporation thereof, for ten years from September 1, 1929, with the right of renewal. Clause 7 of this agreement provides that upon the execution and delivery of the lease an agreement shall be entered into between the new company and Famous Players, whereby Famous Players shall agree to select and book pictures, they having the exclusive right to do so, except in case of emergency. There is the usual protection of Famous Players against financial responsibility. Two of the Kershaws are to be managers of the theatres respectively, at a salary fixed by the agreement, and Famous Players are to receive a booking fee of $25.00 per week in respect of each theatre controlled or operated by the new company.

The acquisition of new theatres is contemplated and it is provided that these shall be operated under the agreement. Famous players agree that it will not acquire any new suburban theatre in the city of Winnipeg, without first offering such suburban theatre to the new company, upon the same terms as Famous Players could acquire same. The Kershaws agree that they will not acquire any suburban theatre in Winnipeg without offering the same to the new company upon the same terms as which they could acquire the same. The term "suburban theatre" is defined to mean a theatre situate otherwise than in certain areas set out in the agreement. The Kershaws agree that they will not become interested either directly or indirectly, or as a shareholder, partner, proprietor, part owner, lessee, operator, or otherwise, in any theatre or public hall or auditorium within the area above defined. Provision is made for the setting up of a reserve of $10,000 and the distribution of profits in the new company. The agreement provides that half of the authorized capital of the new company shall be issued to the Kershaws, and the other half to Famous Players, with restrictions on transferring the same.

On September 1, 1929, a lease (Exhibit 80) was drawn up between the Osborne Theatres Ltd., and Kershaw Theatres Ltd., of the Tivoli and the Osborne theatres for ten years from September 1, 1929, with provision for a renewal for a further term of ten years. Both houses have been operated under this agreement.

The Osborne has a seating capacity of 786, and the Tivoli 805; they are both second run houses.

Winnipeg Theatre (R.K.O.).—Famous Players interest in this theatre was acquired by stock ownership in R.K.O. Canada, Ltd., in 1929 (Exhibit 29). It has a seating capacity of 1,802. It is a downtown first run house and will be dealt with more particularly when dealing with the R.K.O. agreement.

Arlington, Wonderland, Crescent and *Gaiety* Theatres.—On April 17, 1929, Famous Players took an option (Exhibit 67) from Henry A. Morton, to purchase the unexpired term, with privileges of renewals, of the leases of these four theatres. The purchase price was $45,000. Mr. Bragg states (Evidence, p. 720) the purchase was completed. Famous Players became interested to the extent of 100 per cent in the operations of these theatres. The seating capacities of the above four theatres are as follows: Arlington, 554 seats; Wonderland, 594 seats; Crescent, 566 seats; and the Gaiety, 716 seats. All are second run houses.

Playhouse Theatre.—This theatre was operated from January 17, 1929, under a joint agreement with Major Jos. Graham (Exhibit 68). The lease expired on August 31, 1930, and was not renewed. The operation was unprofitable.

Winnipeg Summary.—There appear to be nine theatres in Winnipeg now controlled by Famous Players and its affiliations, and twenty-six independent houses. Famous Players houses have a seating capacity of 9,715, and the independents 17,803, being a total of 27,518. Famous Players thus control a little over one-third of the seats. The Capitol, having 2,093; the Metropolitan, 1,799; and the Winnipeg (R.K.O.), 1,802, are the largest houses in the city, the largest independent house being the *Starland* with 1,500 seats.

It should perhaps be mentioned that, starting on July 13, 1926, (Evidence p. 535) Famous Players had the booking for three theatres, the *Lyceum*, *Starland* and the *College*, which were operated under lease by the Canadian Universal Film Co., Ltd., and which lease expired in September, 1930. This arrangement provided that for this service Famous Players were to be paid 50 per cent of the net proceeds. The operation proved unprofitable and was abandoned. In this connection, however, Mr. Bragg (Evidence, p. 538) says that in addition to the prospective profits, there was a further consideration to Famous Players. He puts it this way: "The more theatres we have to buy for, the greater our purchasing power, of course." He was asked:

> "Q. And the greater the influence you can exert upon the distributing agencies.—A. Yes, I suppose so, in common with any other large purchaser."

2. *Brandon*—Capitol Theatre—Strand Theatre

Capitol.—This theatre is leased and operated by Paramount Western Theatres Ltd., a company incorporated under Dominion charter, letters patent being dated July 14, 1923. Famous Players own all the capital stock thereof.

The interest of Famous Players was originally acquired on June 6, 1923, under the agreement with Mr. Clarkson (Exhibit 213). The seating capacity is 663 (Exhibit 123) and it is a first run silent house.

Strand.—This theatre is operated under lease, by Strand Theatre, Brandon, Ltd., a 100 per cent subsidiary of Paramount Theatres Ltd., which is in turn a 100 per cent subsidiary of Famous Players. The lease is from Anna M. Hughes, and runs for thirteen years and three months from July 20, 1923.

The theatre has 786 seats (Exhibit 350) and is a first run house showing sound pictures.

The head office of the operating company is at Brandon. Famous Players has thus a monopoly of the moving picture business in Brandon, a city of about 17,500 population.

(G) PROVINCE OF SASKATCHEWAN

A large portion of the province of Saskatchewan is regarded as part of the Winnipeg territory, and the film service is from the Winnipeg offices of the various exchanges. The situation in Saskatchewan, served from Winnipeg, will next be dealt with.

1. *Saskatoon*—Daylight Theatre—Empire Theatre—Capitol Theatre

By the agreement with Mr. Clarkson of June 6, 1923 (Exhibit 213), Famous Players acquired the interest of Allen Theatres Ltd. Under agreement dated July 24, 1920, between Agnes C. Byers et al, and Allen Theatres Ltd., and the National Trust Co., relating to shares of stock in the Daylight Theatre Company Ltd., (Evidence, p. 3361) Mr. Bragg states that at this time Allen Theatres Ltd. owed a considerable amount of money on the purchase of a half interest in Daylight Theatres Ltd., which was on the deferred payment plan, and that what

Famous Players really acquired was the right to pay for all of those shares, and for this purpose the consent of Agnes Byers and others to the transaction was necessary. Agnes C. Byers and other shareholders entered into an agreement with Famous Players on December 3, 1923, by which Mrs. Byers and the others consented to the transfer of the shares to Famous Players, and Clause 3 of this agreement, recites that

> "neither of the parties hereto will enter into any amusement enterprise in Saskatoon except under the name of Daylight Theatre Company Limited without the consent of a majority of Directors of said Company."

The shares were, immediately on the execution of this agreement, paid for, and transferred to Famous Players (Mr. Bragg's evidence, p. 3361). Since the above date, Famous Players have a 50 per cent interest in the Daylight Theatre Co., Ltd.

Daylight.—This theatre is operated under lease from the above named company, the first lease being from one J. H. Ashdown for ten years from January 1, 1920. It has 881 seats and is a first and second run theatre.

Empire.—A lease of this theatre was acquired on September 10, 1926 (Exhibit 90). The lease is from the Colonial Investments and Loan Co., Ltd., to Daylight Theatres Ltd., Famous Players Canadian Corporation being a party to the lease as guarantor. It is for two years from October 15, 1926. The theatre was held under this lease until August 31, 1930, when the lease was surrendered. Mr. Bragg says (Evidence, p. 1001-2) the lease was surrendered

> "August 1930. That is the date that the surrender was to take effect. Mr. Commissioner, you should know that before surrendering the lease of that theatre we consulted with our local managers and partners and also with our western divisional managers, and there was some difference of opinion whether we should give the theatre up or not, it being claimed by certain parties that outsiders wanted to get this theatre. But, having regard to the record of our operations there, we decided to let the theatre go anyway."

The operations on the whole have not been successful financially (Evidence, p. 1008). The theatre was open only for 115 days during the years 1928 and 1929, and has apparently remained closed since the Daylight Company gave up the lease.

Capitol.—This theatre was built by the Daylight Theatre Co., Ltd., about two years ago, *i.e.*, 1929, and was opened in May or June, 1929. It is a first run house with a seating capacity of about 1,600, and is the leading theatre in Saskatoon (Evidence, p. 1000).

There are three independent theatres in Saskatoon, viz: the *Bijou,* 316 seats; *Tivoli,* 750 seats; *Roxy* 500 seats. Saskatoon has a population of about 31,000.

2. *Regina*—Capitol Theatre—Metropolitan Theatre—Grand Theatre

Capitol.—This theatre was built by Famous Players shortly after that company commenced business. The company owns the freehold and it has been in continuous operation. It has a seating capacity of 1,329 and is a first run house.

Metropolitan.—This theatre was acquired on June 6, 1923, from Mr. Clarkson on the acquisition by Famour Players of Allen Theatres' interests (Exhibits 213 and 123) by acquisition of the interest and equity of redemption of Allen Theatres, Ltd., in the leasehold property comprising the theatre and land upon which it is built.

Grand.—This theatre was operated by Famous Players under an agreement of January 17, 1929, with Christina Steel Graham and Joseph Graham, the owners of the ground (part of Exhibit 68). Subsequently to the entering into of the agreement, the theatre was reconstructed, a modern stage put in, and certain other changes made. Rent was to be paid to the owner as an expense, and the profits were to be divided equally. Although not required to do so by the agreement, Famous Players paid half of the cost of alterations. The theatre has a seating capacity of 928 seats. It is a second run house. The agreement also provides for the contemplated securing of control of the operation of the Rex theatre, Regina. This, however, was not acquired.

There are two opposition houses, the *Rex* with 635 seats and the *Broadway* with 825 seats, both subsequent run houses. The Famous Players thus control in Regina 3,267 seats as against 1,460 in the opposition and have the two first run houses. Regina has a population of about 37,000.

3. *Moose Jaw*—Capitol Theatre—Savoy Theatre

These theatres were acquired in June, 1923, under the Clarkson agreement (Exhibit 213). Particulars of these will be dealt with when referring to Calgary. The *Capitol* has 910 seats and is a first run house. The *Savoy* has 534 seats, and is maintained closed. There are two independent houses, the *Royal* with 500 seats, and the *Orpheum* with 750 seats.

4. *Shaunavon*—Idle Hour Theatre—Plaza Theatre

Control of these theatres was acquired on June 12, 1929, by Famous Players under their agreement (Exhibit 71) with Shaunavon Amusement Limited, the owner of the theatres. It is the usual operating agreement, by which Famous Players agrees to operate the theatre, and select and book pictures, the immediate management to be by the owner. From the gross receipts are to be deducted the operating expenses, the rental of $1,200, and sufficient to maintain a reserve of $1,500, and the balance to be equally divided between the owner and Famous Players. The agreement is applicable to the *Idle Hour* from July 15, 1929 to August 31, 1929, and to the *Plaza* for five years from September 1, 1929. There is an option to Famous Players to extend the period in respect to the Plaza for a further period of five years, and it is provided that the Idle Hour shall not be used after August 31, 1929, for the purpose of a theatre of any kind, unless the opening of the Plaza is deferred, when the Idle Hour may be operated until the opening of the Plaza, but not later than May 1, 1930 in any event.

The Plaza has been operated continuously since completion of its reconstruction, and the Idle Hour has been maintained closed. Famous Players thus acquired control of, and a 50 per cent interest in the profits of, the only theatre now operating in Shaunavon. The seating capacity is 664.

5. *Weyburn*—Hi-art Theatre

Control of this theatre was acquired by Famous Players by their agreement (Exhibit 81) dated August 17, 1929, with Robert Clay Sutherland, the lessee from the owner, for five years from September 1, 1929, with the privilege of renewing for a further term of five years. This is the usual operating agreement providing for the selection and booking of pictures and the general direction of the theatre by Famous Players, and the immediate management by Sutherland, who shall "comply with and conform to the suggestions and requirements of the corporation in respect to the management of the said theatre." After payment of expenses and the rent and accumulating a reserve fund of $2,000, and equal amounts to Famous Players for booking fees and to the Manager for salary, the balance of the gross receipts is to be divided equally. The agreement is to come into effect on September 1, 1929, and to extend during the term of the lease and any extension thereof.

The seating capacity is 460. It is a first run house, and the only independent theatre in Weyburn is the *Cameo* with 300 seats. Weyburn has a population of about 4,800.

6. *North Battleford*—Empress Theatre

Control of this theatre was acquired under agreement (Exhibit 128) dated March 6, 1930, by which Famous Players entered into the usual operating agreement with Ernest Warren Marshall, the owner of the theatre. Famous Players agrees to pay $3,000 for an undivided half interest in the equipment, otherwise the agreement is in effect the same as the two immediately above referred to.

Famous Players thus acquired a half interest in the profits of this theatre without any capital expenditure except the $3,000 before mentioned. The Empress is the only theatre in North Battleford, and has a seating capacity of 487. The operation has been profitable.

(H) PROVINCE OF ALBERTA

Film service for the Alberta theatres is provided from the city of Calgary.

1. *Edmonton.*—Empress, Dreamland, Monarch, Princess, Capitol and Empire Theatres

Empress.—This theatre was under lease to Western Amusement and Property Company Limited, a 100 per cent subsidiary of Famous Players. The interest of Famous Players in this company was first acquired on April 12, 1921, from which time it had operated the theatre. The lease terminates on March 1, 1932. The seating capacity is 820.

Dreamland.—Dreamland Theatre Limited was the lessee of this theatre for a term ending December 31, 1934, and had been operating the theatre. It has a seating capacity of 500.

Monarch.—Alexander Entwistle is the lessee of the Monarch Theatre Building for 99 years, renewable, and Monarch Edmonton Limited the owner of the fixtures and equipment in the Monarch Theatre. It has a seating capacity of 550.

Princess.—Entwistle Theatres Limited was the assignee of a lease of this theatre for a term ending August 31, 1937, and owned the fixtures and equipment, and had been operating the theatre, which has a seating capacity of 650.

By an agreement dated December 23, 1929, (Exhibit 30), the Entwistles and the theatre companies above named entered into an agreement that these four theatres should be operated jointly for the benefit of the companies above named. Entwistle agrees to lease the Monarch to the Monarch Edmonton, Limited; Western Amusement and Property Co. Limited agrees to procure the Famous Players to enter into a booking agreement in the form "Schedule E" to the agreement, which is in the usual form of similar agreements entered into by Famous Players and gives Famous Players practical control of the selection of pictures for these four theatres, the selections to be binding on the operators of the theatre, booking fee to be $25 weekly for each theatre, and the theatre companies agree not to exhibit any pictures except those selected by Famous Players.

The agreement is to come into operation January 1, 1930, and to continue during the term of the present lease of the Empress and any renewal thereof, and in any event not after December 31, 1934, unless otherwise agreed. Alexander Entwistle is to have the immediate management, and on his death Arnold Entwistle, and on his death, incapacity or retirement, Western Amusement and Property Co. Limited is to appoint a manager. John Hazza, District Manager at Calgary for Famous Players, is to be consulted from time to time. The agreement provides that Alexander Entwistle and his successors shall comply with and conform to the suggestions and requirements of Hazza, or his successor, in respect to the management of the said theatres. The operating expenses are to be paid, the rent as provided in the agreement of the respective theatres, the balance of the instalment and service charges of the sound equipment, and a reserve, and the balance is to be divided into two parts, one to be paid to Western Amusement and Property Company Limited, and the other to Entwistle Theatres Limited. The agreement is executed on behalf of the Western Amusement and Property Company, Limited by Thomas J. Bragg, Secretary and N. G. Barrow, Treasurer.

The Empress is a first and second run house, and the other three are listed as second run houses (Exhibit 6).

Capitol.—This theatre is owned, subject to a land lease, and operated by Allen's Edmonton Theatre Limited, of which Famous Players acquired 1,750 fully paid common shares of the total issue of 2,500 shares by the Clarkson Agreement of June 6, 1923 (Exhibit 213). They presently hold 100 per cent of the preference and 90·12 per cent of the common stock of this company. It has 1,467 seats and is a first run house.

Empire.—This theatre has from May 21, 1930, been operated for several years on the terms and conditions outlined in a letter of July 19, 1926, from Mr. N. L. Nathanson, Managing Director of Famous Players, to Mr. C. E. Neill, Vice-President and Managing Director of the Royal Bank of Canada.

On May 21, 1930, Famous Players wrote Mr. Neill, outlining the arrangement and suggesting that Mr. Neill write that the operating arrangement was still in force and would remain effective until the end of the current year, August 31, 1930, and that it would automatically be renewed from that date for an additional year unless cancellation is served by one of the parties on or before July 31, 1930. Mr. S. G. D. Hall, Assistant General Manager of the Royal Bank, replied on May 29, agreeing to this suggestion. These two letters are Exhibit 26.

Mr. Nathanson's letter of July 19, 1926, appears in the evidence at page 321, and Mr. Neill's letter of July 21, 1926 in reply is at page 323. The terms were that the Bank was to receive out of the net revenue, after operating expenses, etc., $10,000 as a rental, after which the profits were to be equally divided.

Mr. Bragg says that Famous Players have absorbed losses which occurred at certain periods. The theatre has been operated for road shows primarily and has no moving picture equipment. (Mr. Bragg's evidence, p. 326). The operation has not been profitable to Famous Players.

There are four independent theatres in Edmonton, the *Gem* with 450 seats, the *Rialto*, 700 seats, and the *Rose* with 350 seats (Exhibit 350), also the *Pantages* Theatre, which I understand is closed. Famous Players control 5,474 seats in Edmonton as against 1,500 operating seats of independent theatre owners (Exhibit 350), thus giving them a predominant position in the theatre business in this city of about 58,000 population.

2. *Calgary*—Capitol, Palace, Strand, Regent and Grand Theatres.

Capitol.—The site for this theatre was acquired by Famous Players some time in 1920. The theatre was built thereafter. It is still owned and operated by Famous Players (Evidence, p. 142). It has a seating capacity of 1,618. It is a first run house.

Palace.—This theatre is owned by Famous Players who purchased it from the National Trust Company, which company was the mortgagee of Allen Calgary Theatres Ltd., who owned the theatre originally, a portion of the stock of which had been acquired by Famous Players from Mr. Clarkson under the agreement of June 6, 1923. Another company was formed called Palace Theatre

Co., Ltd., Calgary, which leased the theatre from the National Trust Company and operated it for a short time, then that company went out of business. Subsequently Famous Players purchased the freehold of the theatre from the National Trust Company, and have owned and operated it ever since. It is a first run house with 1,777 seats. During the time of the operation by Palace Theatre Ltd., Famous Players was operating the theatre for that company, the stock of which was owned by J. B. Barron and A. L. Barron of Calgary (Exhibit 101).

Strand and *Regent* Theatres.—By an agreement dated March, 1926 (Exhibit 112), Kenneth M. Leach, the lessee of the Regent theatre for five years from April 1, 1926, at a rental of $9,000.00 per year, entered into an agreement with Allen Theatre Co., Ltd., the owners of the Strand theatre, whereby Leach agreed to close the Regent and to incorporate a new company for the purpose of operating the Strand theatre, and the Allen Company agreed to grant a lease of that theatre to the new company on the terms set out in this agreement.

The new company was formed under the name of the Strand Theatre Co., Ltd., and the new company is to enter into a booking agreement with Famous Players, and to pay them a booking fee of $50.00 per week for such period as the theatre does not run at a loss. Provision is made for the eventuality of being able to procure the Palace theatre which will contribute to the rental of the Regent theatre when closed. Leach is to have a free hand in selecting and booking the pictures for the Strand. The lease to be given to the new company is to contain an option for a renewal for a further period of five years and also contains this provision, " except that the Regent Theatre situation shall not enter into it, unless it is decided to renew the lease of the Regent Theatre, in order to keep it closed to prevent anybody else from operating it." Leach agrees that no default shall be made under the lease of the Regent theatre, so as to permit the lessor to cancel the same. The rent payable to the Allen Company is $6,000 per year and 50 per cent of the net profits.

An agreement (Exhibit 133) dated May 1, 1926, between the National Trust Co., Ltd., the lessor; the Palace Theatre Ltd., the lessee; Allen Theatre Co., Ltd., and Famous Players; recites that the Allen Co., has entered into an arrangement with the lessee of the Regent theatre, by which it shall be kept closed for a period of five years from May 1, 1926, and also that it is considered that it would be beneficial to those operating the Allen Theatre and the Palace theatre if competition of the Regent theatre could be eliminated. The agreement provides that the Palace theatre shall contribute $60 per week towards the rental of the Regent theatre for the period of five years from May 1, 1926, provided that the Regent shall so long be kept closed as an operating theatre or picture house; and the National Trust Company, the lessor of the Palace Theatre, consents to the arrangement. It is further provided that if the Palace theatre is sold, the lessor, the National Trust Company, upon being satisfied that the Regent will be kept closed for the said period of five years, will pay to the Strand Theatre Ltd. $60 per week for fifty-two weeks in advance. Further liability of the Palace is then to cease.

The Regent remained closed under this agreement from the commencement of the lease from Anton Whealler to K. M. Leach for five years, from April 1, 1926, to January 1, 1928, it having been converted into stores sublet from that date to March 31, 1931. The Hudson Bay Company subsequently bought the property and Leach's lease was terminated.

62·14 per cent of the capital stock of Allen Theatre Company, Ltd., Calgary is owned by Famous Players.

The Strand theatre previous to this arrangement had been showing a small operating profit, but had, in each of the years 1924, 1925 and 1926 shown a net loss. After this arrangement, and the closing of the Regent, the operations have been highly successful, showing a very large profit. The seating capacity of the Strand is 813. It is a first run theatre.

Grand.—Famous Players acquired this theatre by a lease (Exhibit 104) dated August 15, 1926, from the trustees of the estate of the late Sir James A. Lougheed, at a rental of $12,000, per year and 50 per cent of the net profits. The lease is a very long one and contains quite onerous terms. The term of the lease was five years from August 15, 1926.

The lease of this theatre was agreed to be turned over to Radio-Keith-Orpheum (Canada) Ltd., by agreement (Exhibit 29) dated May 29, 1929, between Famous Players and Radio-Keith-Orpheum Corporation of New York. Up to this time it had been open from time to time for road shows, vaudeville and motion pictures, in 1928 playing largely the Orpheum Circuit Vaudeville. After the last mentioned agreement, it commenced operating under Radio-Keith-Orpheum (Canada) Ltd., three days a week with road shows until February 1, 1930, when the operation of the theatre was practically discontinued, and it was occasionally rented from February 15 to May 17, 1930. The Grand is at present closed, but there are some bookings for this year.

Moose Jaw, Sask.—Savoy Theatre—Capitol (Regent) Theatre.—The two theatres in Moose Jaw (p. 92, *supra*) with which we are concerned are the *Savoy* and the *Regent*. The Savoy was originally leased by Baird and Clarke Ltd., of Moose Jaw to Kenneth McClure Leach (Exhibit 134) of Calgary, the person who was interested in the formation of the Strand Theatre Co., of Calgary. The lease was for five years from April 1, 1925. On October 8, 1929, Baird and Clarke leased this theatre to Famous Players (Exhibit 135) for five years from April 1, 1930. This was done with the consent of Leach. Famous Players had a lease (Exhibit 136) from Hugh Ferguson and Edward Charles Matthews dated March 7, 1927, of the Regent theatre, therein called the Capitol, for three years from May 1, 1927. An agreement (Exhibit 137) dated April 4, 1930, between Leach and Famous Players recites that Famous Players is the lessee of the Regent for a term expiring April 30, 1930, and "it is intended that the lease of the said Regent theatre shall not be renewed". It also recites that Famous Players is the lessee of the Savoy for five years from April 1, 1930, "which last mentioned lease was entered into by and with the consent of Leach". It also recites the pre-existing arrangement between Leach and Famous Players, by which Leach was entitled to certain profits in the operation of the Savoy and Regent theatres, and that Leach has agreed to relinquish all his rights to participation in the profits of the two theatres. The agreement provides that as and from May 1, 1930, Leach will not be entitled to any share of these profits, and each party releases the other, and Leach disclaims any interest in the lease of the Savoy theatre.

Mr. Bragg states (Evidence p. 1712) that the Regent theatre was operated jointly with Leach on the same basis as the Savoy, from May 1, 1927 for a period of eight months. This theatre was not opened until September 1, on which date the Savoy was closed.

> "That is the time we secured the lease of the Regent theatre; at least from the time we entered into an arrangement with Leach re the Savoy, the Regent was kept closed until the 1st September 1927, on which date it was reopened and the Savoy closed and used as a church. Then the lease of the Regent theatre expired on the 30th April, 1930, and was not renewed. I don't know what is being done with the theatre now; we are not interested in it any longer, it was unprofitable."

The Regent does not appear in the list of theatres supplied me by Colonel Cooper, and I therefore conclude that it has not been reopened; this also applies to the Savoy.

The principal theatre in Moose Jaw is the *Capitol,* owned and operated by Allen's Theatre Co., Ltd., (Calgary), in which Famous Players has a 62.14% stock interest. The Capitol has 910 seats and is a first run house. There are two other theatres, the *Royal* with 500 seats and the *Orpheum* with 750 seats. Moose Jaw has a population of about 21,000. The Royal is a silent house.

Famous Players and its affiliations have 5,756 seats in Calgary. The independent houses are *Empress* 499 seats; *Iris,* 500 seats; and the *Variety,* 750 seats, a silent house; a total of 1,749 seats (Exhibit 347). With Famous Players' control of over 75% of the total seats in Calgary they occupy a predominant position in the theatre business in that city of about 63,000 population.

3. *Lethbridge*—Capitol (formerly Palace) Theatre

An agreement dated September 2, 1929 (Exhibit 86), between Famous Players called the "Corporation" and Lethbridge Theatres Ltd., called the "Company" recites that the company owns and operates the Palace theatre in Lethbridge, and intends reconstructing and expanding same. It provides for the enlarging of the theatre, the corporation to advance up to $37,500 for such purposes, to be secured by a first mortgage. By the agreement, Famous Players book the theatre but do not guarantee results. The agreement is to extend for twenty years, Famous Players to receive a booking fee of $50 per week, the company to receive $500 per month, and one Shackleford to be manager at $50 per week, with an extra $10 allowed him if he paints signs and "other things of that sort, required for the theatre."

A reserve fund of $5.000 is to be established and thereafter the profits from the theatre are to be paid half to the company and half to Famous Players. Famous Players agree to make available to the compny "the benefits of purchasing supplies through Canadian Theatre and Electrical Supplies Ltd.," a 100% subsidiary of Famous Players. There is a further proviso, that throughout the term of the agreement neither the company nor any of its directors will directly or indirectly become interested in any theatre business, save that in respect of the theatre in question, in Lethbridge or within a radius of five miles, without the previous consent of Famous Players; and Famous Players agree that if it acquires an existing theatre in Lethbridge, it will be for the benefit of both parties to the agreement, but the decision as to the acquisition of any theatre shall be by mutual consent. By the agreement Famous Players acquire an option to purchase the property throughout the term thereof.

The Capital is a first run house and has 924 seats. There is an independent theatre, the *Empress,* with 500 seats in Lethbridge, which has a population of about 13,500.

There are but two places of 2,500 population or over in Alberta (Exhibit 349) in which Famous Players or its affiliations have not theatres, viz., Medicine Hat and Drumheller.

Speaking generally the Province of Alberta presents the same picture, as to the domination of the moving picture business in that province by Famous Players and its affiliations, as appears in other provinces.

(I) RADIO-KEITH-ORPHEUM (CANADA) LTD. CHAIN

On May 29, 1929, Famous Players and Radio-Keith-Orpheum Corporation, New York, called the "American Corporation," entered into an agreement (Exhibit 29) which has already been referred to in part.

This agreement recites that Famous Players is largely interested in motion pictures theatres in Canada, and by reason of its extensive operations enjoys advantages in the booking of motion picture productions, and that the American Corporation has certain facilities and advantages for booking and supplying vaudeville acts and entertainments in Canada, and that the parties are agreed to organize the Radio-Keith-Orpheum (Canada) Ltd. The parties agree to organize this company referred to as the " new company " with an authorized capital of $2,000,000 divided into 20,000 preference shares of $100 each, bearing accumulative dividends of 7 per cent and redeemable at 105 per centum of the amount paid thereon, and 20,000 no par common shares, divided into 10,000 shares Class " A " stock and 10,000 shares Class " B " stock without any preference between the two classes. The Board is to consist of six directors, three to be elected by the holders of Class "A" stock and three by the holders of Class " B " stock, and certain officers are to be designated by the directors elected by each class. The officers are to act without salary.

Article 8 provides that Famous Players is to endeavour to procure for the new company a lease of the *Pantages Theatre* in Toronto—this was not done—also to procure a similar lease of the *Capitol Theatre* in Winnipeg, on terms set out in the agreement. This was procured and turned over to the new company. It is a first run house with 2,093 seats (Exhibit 6, p. 18). Famous Players is also to cause to be assigned to the new company the lease of the *Grand Theatre* in Calgary. This was carried out, as appears at p. 96 in this report. The American Corporation agrees to procure for the new company a lease of the *Keith's Theatre* in Ottawa upon terms mentioned; at the option of the American Corporation, a similar lease of the *Vancouver Theatre* at Vancouver (a lease was obtained for one year and it has since been given up) (Evidence, Mr. Bragg, p. 402), a sub-lease of the *Orpheum Theatre* at Vancouver also on terms set out in the agreement, and to procure the Orpheum Theatrical Co., Ltd., to agree to sell the contents and equipment of the *Orpheum Theatre* to the new company for $250,000.

The American Corporation is to cause to be executed and delivered to the new company a vaudeville booking agreement in consideration of the issue to it from its nominees of all of the Class " B " shares, viz., 10,000.

Provision is made for the taking in of the *Capitol Theatre* in Montreal, but this was not done. This theatre is owned and operated by Famous Players. The agreement further provides that the new company will endeavour to acquire from E. F. Albee, at a cost not to exceed $700,000, the *Imperial* (now the *Capitol Theatre* in Saint John, N.B., and the *Imperial Theatre* at Montreal. These were acquired by the new company and are now being operated by it (Exhibit 6, p. 18). It was also proposed to lease the *Pantages Theatre* and the *Capitol Theatre* in Hamilton. This, however, was not done. Each party agrees to subscribe and pay for sufficient preferred shares in the new company, at par, in equal amounts, to provide for carrying out the various contemplated purchases and for working capital, and to lend to the new company in equal shares up to $500,000 such sums as may be required over and above such sums as may be derived from the sale of the preferred shares. The American Corporation agrees to cause B. F. Keith-Albee Vaudeville Circuit and Booking Corporation to enter into a contract with the new company, whereby for twenty years from September 2, 1929, each would agree to procure and book vaudeville acts and attractions for the theatres operated by the new company, which use vaudeville in their programs. The theatres are to procure the vaudeville acts and attractions exclusively from these two booking companies, which in turn agree that they will not book vaudeville acts or attractions in any other theatres located in or within a radius of twenty-five miles of cities in Canada where the new company has a vaudeville theatre. The exception is made of Shea's Hippodrome, Toronto.

The American Corporation agrees to give the new company the benefit of its contract with the Radio Corporation of America in respect to inventions and improvements in the field of public entertainment.

Famous Players agrees to enter into an agreement with the new company for twenty years from September 2, 1929, and extensions of the agreement, whereby Famous Players shall book and procure the motion pictures and films for the theatres operated by the new company, and agrees that in the booking of pictures it will give the said theatres:

> "The choices and preferences of all productions which the Canadian Company may have under contract or control, or which it may be able to furnish, and which are suitable for the new company's theatres."

Famous Players is not to make any profit out of such bookings. Famous Players agrees to give to the theatre in Saint John the first choice of all such pictures as are available to them for such city and theatre, and to give to the theatre, or if more than one to one of the theatres, at Montreal, operated by the new company, the third choice until such time as Famous Players builds its new theatre in Montreal, after which Radio-Keith-Orpheum is to have fourth choice. Keith's at Ottawa is to have second choice, the theatre at Toronto third choice until such time as Famous Players builds its new theatre in Toronto, then fourth choice. The two theatres in Hamilton, if and when operated and controlled by the new company, are to have second and third choice respectively. The Winnipeg theatre is to have second choice; and the theatre, or if more than one, one of the theatres, operated by the new company in Vancouver, the second choice, subject to certain outstanding rights and commitments to the Strand theatre, Vancouver.

Famous Players agree that it will not, except in theatres then operated by it where purchase or booking agreements at present provide for vaudeville, book vaudeville acts in any of these theatres from any other company than the American Corporation and its subsidiaries without its consent, unless the American Company cannot reasonably or on a reasonable basis supply the required suitable vaudeville acts. The American Corporation agrees that it will not acquire or become interested in or participate directly or indirectly in the profits of any theatre in Canada other than those of the said new company, except that if the American Corporation has the opportunity to acquire any theatre in Canada it shall offer the same to the new company on the same terms at which the theatre is offered to the American Corporation. If not accepted by the holders of Class "A" stock, the American Corporation may then proceed to acquire the theatre.

Article 29 provides that neither party shall acquire, operate, manage, book or become interested in any way in any theatre in Saint John, N.B., or Ottawa, directly or indirectly (except those theatres in Ottawa in which Famous Players is then interested) without first having offered the other party to this agreement an opportunity to participate on equal terms.

There is a memorandum attached to the agreement, referred to in Article 20, to the effect that one Dewees who has been mentioned in this report *ante* and will hereafter be referred to, will have sole charge:

> "As regards the booking of pictures produced or distributed by First National Pictures, Inc. . . . Dewees agrees to co-operate with the Famous Players Canadian Corporation in regard to the booking thereof and to submit all proposed bookings and prices to Famous Players Canadian Corporation for its approval."

and

> "It is agreed that the booking of other pictures can be done more economically by close co-operation between Dewees and Famous Players Canadian Corporation."

It should be noted that Radio-Keith-Orpheum (Canada) Ltd., acquired on June 25, 1929, 100 per cent of the capital stock of Bleury Investments Ltd., which owns and leases to Radio-Keith-Orpheum (Canada) Ltd., the Imperial Theatre, Montreal, and owns and operates the Albee Building in Montreal. It also acquired at the same time 100 per cent of the capital stock of Maritime Theatres Ltd., which owns and leases to Radio-Keith-Orpheum (Canada) Ltd., the Capitol Theatre, Saint John. The *Rialto Theatre* at Saint John is operated by Radio-Keith-Orpheum (Canada) Ltd., under an operating agreement with one F. G. Spencer of the F. G. Spencer Co., Ltd., which participate to the extent of 50 per cent in the profits (Evidence, p. 4440).

In the result Radio-Keith-Orpheum (Canada) Ltd., now operate the following theatres (See Exhibit 6, page 18) all of which except the Rialto are leaseholds:

1. Grand, Calgary. Seating capacity 1,499, road show. Closed. Leased from the estate of the late Sir James Lougheed. (Exhibit 104).
2. Imperial, Montreal. Seating capacity 1,915, first and second run. Leased from the Bleury Investments Ltd., 100% subsidiary of R.K.O. (Canada) Ltd.
3. Keiths, Ottawa. Seating capacity 2,592, first run. Leased from Bank and Queen St. Realty Co., Ltd., a 100% subsidiary of R.K.O. Corporation, N.Y.
4. Capitol, Saint John, N.B. (formerly Imperial). Seating capacity 1,630, first run. Leased from Maritime Theatres Ltd., a 100% subsidiary of Radio-Keith-Orpheum (Canada) Ltd.
5. Orpheum, Vancouver. Seating capacity 2,871, first run. Leased from Orpheum Theatrical Co., Ltd. This theatre it will be recalled was built by Langer, and was in course of erection when his other theatres were acquired by Famous Players. This theatre was subsequently leased to the Orpheum Theatrical Co., Ltd., who in turn have leased it to the Radio-Keith-Orpheum (Canada) Ltd.
6. Capitol, Winnipeg. Seating capacity 2,093, first run. Leased from Famous Players Canadian Corporation, Ltd.
7. Winnipeg, Winnipeg (formerly the Orpheum). Seating capacity 1,802, first and second run. Leased from Fort St. Development Co., Ltd., a subsidiary of R-K-O Canada Ltd. (Evidence, p. 443).
8. Rialto, Saint John. Seating capacity 985, first and second run, operated under the operating agreement above referred to.

By this agreement and by the pooling agreement in regard to the Shea's Hippodrome, Toronto, and by the operations of the Imperial Theatre, Toronto, and by one of Famous Players theatres in Montreal, and its other operations, Famous Players and its subsidiaries and affiliations have obtained practically complete control of the vaudeville theatrical business in Canada. (Evidence, pp. 395-447 incl.).

The present officers of Radio-Keith-Orpheum (Canada) Limited are as follows:

A. Cohen, President.
H. S. Brown, Vice President.
T. J. Bragg, Secretary.
B. B. Kahane, Treasurer.
C. Robson.
J. P. Plunkett.

Mr. Kahane is Vice-President of Radio-Keith-Orpheum Corporation of New York, and Messrs. Brown and Plunkett are also representatives thereof.

(J) Closed Theatres

By Exhibit 225 there appear to be thirty houses owned, leased or controlled by operating agreements or otherwise, which are or have been maintained closed by Famous Players, its subsidiaries or affiliations. Exhibit 235 which is a list of all Famous Players houses, compiled by Mr. Bragg, assisted by Mr. Gehring, shows that there were, as of March 7, 1931, twenty-five of these houses not in operation. This difference may be accounted for by the fact that five of the theatres which appear in Exhibit 225 have since the preparation of that information been disposed of by lapse of lease or otherwise.

These closed theatres are all in places where Famous Players are interested in other theatres.

(K) Theatre Sites and other Properties

As of August 30, 1930, Famous Players had sixteen locations in various places throughout Canada, from Halifax to British Columbia, which it had purchased and carried on its books as theatre sites. Fourteen of these are freehold and two properties, leasehold. On some of these sites there are theatres erected. Some are maintained closed and have been dealt with above. In some locations theatres were under construction and have since been brought into service, viz: Capitol Theatre, Halifax; Regent Theatre, Port Hope; and the Sudbury Theatre.

In Montreal, Famous Players have two locations, one on Mountain St., and the other on Stanley St.; they also have a site in Quebec City, and on downtown Yonge St. in Toronto, and an important property on Queen St. in Ottawa.

These properties were doubtless in most instances purchased with the bona fide intention of erecting theatres thereon, but they in common with many of the closed theatres are a constant threat to anyone contemplating opening a theatre in any of the localities where the properties or closed theatres are held.

This may be illustrated by copy of a letter (part of Exhibit 158) dated June 16, 1927, from Mr. J. Allen, (Manager of the company which operates, by arrangement with Famous Players, the Majestic Theatre in Stratford) to Mr. C. B. Hider, Manager of the Majestic Theatre, which reads as follows:

> "We heard a report that someone is building a new house in Stratford. Have you heard anything about it and is there any truth in the report? If so, if you know this party, would advise you see him and endeavour to discourage him. Point out the Classic is just kept ready for such an emergency, and if he builds a new house, it means we will open the Classic and business will be split amongst three houses.
>
> "Point out that before when the three houses were operating none of them was paying, and it would be impossible now for three houses to pay.
>
> "Also point out that we, being associated with Famous Players Canadian Corporation, who operate over a hundred theatres in Canada, have control of the film market and, between two houses using double bills, we could use eight pictures a week, and we naturally have the pick from all the exchanges, so what he would have left would be very little and that undesirable product, and he would have to pay through the nose for it.
>
> "Please let us have a report on this matter."

This letter, together with Mr. Hider's reply of June 17, 1927, in which he says that he does not think there is any truth in the report, was sent, also with a letter in this exhibit, June 20, 1927, from Peterboro Theatre Limited, per J. Allen, Manager, to Clarence Robson; and this letter together with the two copies of letters referred to was given me from Mr. Robson's Famous Players file of sundry correspondence for the year 1927.

Particulars regarding these sites are contained in Exhibit 224, and also referred to in Exhibit 6, page 14.

(L) Summary for Canada

Taking Canada as a whole, Famous Players occupy either an exclusive or a dominant position in all towns and cities having a population of 10,000 or more, except:

Province	City	Population
1. Manitoba	St. Boniface	14,171
This is in reality a suburb of Winnipeg and should therefore really be considered in connection with the Winnipeg situation.		
2. New Brunswick	Moncton	17,488
3. Nova Scotia	Glace Bay	17,007
4. Ontario	St. Thomas	16,026
	Timmins	10,000 (approx.)
5. Quebec	Hull	35,651
This city is immediately across the Ottawa River from Ottawa, which shares the patronage of the Hull theatre going public to a large extent and where Famous Players and its affiliations have three first run houses, as against one first run opposition 'the Centre.'		
	Joliet	10,000 (approx.)
	Levis	10,000
which is immediately across the St. Lawrence River from Quebec.		
	St. Hyacinthe	11,630
	Shawinigan Falls	10,606

It must be seen that in Alberta, British Columbia and Saskatchewan there are no places of this size in which Famous Players have no theatres. The figures are taken from Exhibit 349, which in turn are taken from Might Directories Limited and are based on the 1921 census. There are no Famous Players houses in Prince Edward Island.

An examination of Exhibit 350 discloses that in the following cities Famous Players or its subsidiary or affiliated companies operate the leading first run theatres:

Province	City	Population	Theatres	Seating capacity
Alberta	Calgary	63,117	Capitol	1,618
			Grand	1,499
			Palace	1,777

No serious opposition.

Alberta	Edmonton	58,627	Capitol	1,487
			Empire	1,477

The only opposition is the Rialto with 700 seats, owned and operated by Mr. Long and his brother, who desired to give evidence had there been a sitting in Edmonton and who seem to have considerable difficulty in getting suitable pictures, with the result that this theatre at the present time is in the hands of the creditors.

Alberta	Lethbridge	13,725	Capitol	724

The independent house is the Empress, with a seating capacity of 500.

British Columbia	New Westminster	14,495	Columbia	910

The opposition is the Edison with 855 seats.

British Columbia	Vancouver	117,217	Capitol	2,155
			Orpheum	2,871

The largest theatres in opposition are the Beacon with 1,700 seats, and the Royal—1,000 seats.

Owing to the affiliation which Famous Players has been able to make in Vancouver, the position there is much stronger than it appears from the actual figures, and the population of what is called "Greater Vancouver" exceeds the figure above given by a considerable amount.

British Columbia	Victoria	38,727	Capitol	1,330
			Royal Victoria	1,507

By the operation of the Capitol and keeping the Royal Victoria closed, and by the operation of the Dominion with 856 seats, an additional first run house, Famous Players dominate the situation; the largest opposition house being the Coliseum with 959 seats.

Manitoba	Brandon	16,422	Capitol	634
			Strand	786

This is a closed town, there being no opposition there to Famous Players.

Manitoba	Winnipeg	179,087	Capitol	2,093
			Metropolitan	1,799
			R.K.O. Winnipeg	1,802

The Winnipeg situation has been dealt with on p. 90 of this report and it need only be observed here that the first run situation is fairly well controlled by the Famous Players houses.

Winnipeg has a very considerable suburban population in what is called "Greater Winnipeg" that is not indicated by the above figures.

New Brunswick	St. John	46,504	Capitol	1,630
			Rialto	987

There is no serious opposition in St. John to the Famous Players first run houses.

Nova Scotia	Halifax	58,372	Capitol	1,980
			Casino	1,032

These are the two principal theatres, and the opposition is not serious.

Nova Scotia	Sydney	22,545	Capitol	1,087

The only opposition is the Strand with 689 seats.

Ontario	Belleville	12,206	Belle	961

The only opposition is the Capitol with 860 seats. Famous Players maintain closed the Regent with 502 seats.

Ontario	Brantford	29,440	Brant	1,001
			Capitol	1,603

independent theatre.

Province	City	Population	Theatres	Seating capacity
Ontario	Brockville	10,013	New (closed)	1,067
			Capitol	976

No independent theatre.

Ontario	Chatham	11,301	Capitol	1,285

No opposition. The Chatham, or Old Capitol Theatre, and the Princess are maintained closed.

Ontario	Cornwall	14,000	Capitol	1,261
			Palace	821

The latter maintained closed. No independent theatre.

Ontario	Fort William	20,541	Orpheum	948
			Royal	795

No independent theatre.

Ontario	Galt	12,686	Capitol	1,121
			Regent (closed)	853

No independent theatre.

Ontario	Guelph	18,128	Capitol	917
			Regent	880

No independent theatre.

Ontario	Hamilton	114,151	Capitol	2,317
			Palace	2,233
			Savoy (closed)	1,229
			Tivoli	1,307

These three theatres are the leading first run theatres in Hamilton.

Mr. Frederick Guest, who appeared as a witness (Evidence p. 5737) has three theatres, but they are neighbourhood theatres operating in the east end of the city. The Grand Opera House with 1,400 seats is not equipped for sound (Exhibit 347) and the Queens, one of Mr. Guest's theatres, with 1,054 seats, is really a suburban house, so that the downtown first run business in Hamilton is practically all in the hands of Famous Players and its affiliations.

Ontario	Kingston	21,689	Capitol	1,207
			Grand (closed)	1,078
			Tivoli	510

The only opposition to these two operating houses in Kingston is a small theatre, the King Edward, with 258 seats.

Ontario	Kitchener	26,626	Capitol	1,108
			Lyric	1,550

Both first run, and no independent house.

Ontario	London	60,959	Capitol	1,304
			Grand	1,231

The principal opposition in London is Loew's, with 1,965 seats, operated by Loew's London Theatre, Ltd.

Ontario	Niagara Falls	14,764	Capitol	764

The opposition is the Webb, with 860 seats. There is a small theatre, the Tivoli, with 276 seats.

Ontario	North Bay	10,620	Capitol	1,345

The only opposition is the Royal with 762 seats.

Ontario	Oshawa	17,381	Regent	1,055

Independent house, Martin's, with 1,065 seats.

Ontario	Ottawa	118,697	Imperial	1,091
			Keith's	2,592
			Regent	1,202

The only opposition is the Centre with 1,142 seats, which is a first run house (Evidence, Mr. Donn Benjamin Stapleton, p. 4792, who has a franchise for five years with First National Pictures, expiring 1935).

With three first run theatres and protection against Hull, which will be referred to later, Famous Players occupy a predominant position in this city.

Ontario	Owen Sound	12,190	Classic	1,788
			Opera House (closed)	711
			Savoy (closed)	611

There is no independent house in Owen Sound.

Province	City	Population	Theatres	Seating Capacity
Ontario	Peterboro	20,989	Capitol	1,106
			Grand (closed)	1,110
			Royal (closed)	751
The only opposition is the Regent with 595 seats.				
Ontario	Port Arthur	14,806	Colonial	991
There is no opposition in Port Arthur.				
Ontario	St. Catharines	22,043	Capitol	1,180
			Palace	1,324
The only opposition is the King George with 837 seats.				
Ontario	Sarnia	16,059	Imperial	1,032
			Crescent (closed)	468
No independent theatre.				
Ontario	Sault Ste. Marie	20,092	Algoma	1,042
Opposition—Orpheum with 590 seats. Princess with 332 seats.				
Ontario	Stratford	18,888	Majestic	1,198
No independent theatre.				
Ontario	Sudbury	8,572	Capitol	1,419
Opposition—Grand Opera House with 869 seats Regent " " 554 seats Princess " " 490 seats The population of Sudbury has increased since 1921 by almost 10,000.				
Ontario	Toronto	579,293		
This situation has been dealt with elsewhere, where it has been shown that the only downtown first run opposition is Loew's Theatre with 2,088 seats. The population has substantially increased since 1921.				
Ontario	Windsor	52,006	Capitol	1,945
			Palace	1,585
The only opposition is the Regent with 495 seats. From the evidence of Mr. Mechanic, the owner of this theatre, the opposition to Famous Players is not very serious.				
Quebec	Lachine	15,500	Empress	523
			Royal Alexandra	1,000
No independent theatre.				
Quebec	Montreal	900,000		
This situation has been dealt with elsewhere. It is sufficient to state that Famous Players operate the leading first run theatres in the city.				
Quebec	Quebec	124,311	Capitol	1,808
This is the largest and principal first run house in Quebec City.				
Quebec	Sherbrooke	25,500	Granada	1,585
The next largest theatre is the Premier with 860 seats.				
Quebec	Three Rivers	30,460	Capitol	1,224
The next largest house is the Imperial with 800 seats.				
Saskatchewan	Moose Jaw	20,640	Capitol	910
Opposition—Orpheum with 750 seats.				
Saskatchewan	Regina	36,822	Capitol	1,325
			Metropolitan	1,000
The principal opposition is the Broadway with 825 seats.				
Saskatchewan	Saskatoon	31,202	Capitol	563
			Daylight (partially closed).	830
Largest opposition, the Tivoli with 750 seats.				

(M) FINDINGS REGARDING FAMOUS PLAYERS' ACQUISITIONS OF THEATRE INTERESTS

The position which Famous Players occupies in the motion picture business in Canada may, from the evidence adduced before me, be aptly illustrated by three letters which were filed as exhibits, and which I accept not as in themselves evidence of the facts contained so much as illustrating the situation as that may be gathered from the evidence as a whole.

The first of these letters is Exhibit 278, a letter dated March 4, 1925, from Mr. Carl Laemmle, President of the Universal Pictures Corporation, to Mr. J. C. Brady of the Madison Theatre, Toronto. It will be recalled that the Madison Theatre is an independent house operating on Bloor Street West, in opposition to the two Famous Players houses in the immediate vicinity, the Bloor and Alhambra. The Universal Pictures Corporation was at the time, and still is, a fairly large producer of motion pictures in the United States, and distributes its pictures in Canada through the Canadian Universal Film Company, Limited. The letter states:

> "....I am going to show you exactly how I am fixed in Canada and, for that matter, in many territories.
>
> "In the first place, Nathanson (Famous Players) controls most of the representative first run theatres in the big cities in Canada. Now, if I don't get my pictures, or at least some of them, shown in the key cities, my salesmen find it practically impossible to sell them in the other places. In other words, I am more or less at Nathanson's mercy.
>
> "By nature I am independent. My whole history in this business proves it. But there is nothing to be gained by deliberately shutting myself out of the big cities. In fact, there is everything to lose. The theatres which are really independent may be strong enough to make me independent of Nathanson, but they scatter their support in such a way that I can't live on it alone. When my salesmen go in to get bookings for Universal Pictures they find, in a vast number of independent theatres, that such theatres are booked up solidly with pictures made by the very companies which give Nathanson much of his strength. They are sorry but they can't give us all the bookings they would like to.
>
> "If I could get bookings enough to support me; if the independent theatres were substantially represented in the key cities which are now controlled by Nathanson, I could take quite a different stand. But there is no sense in butting my head against a stone wall. I can't build enough theatres in key cities to lick Nathanson. That is not my job. It is the independent theatre's job. If he cannot tackle it, I have simply got to straddle the situation and sell some of my pictures to Nathanson and some to the independents. That is the plain truth of the situation. If I have sized it up wrong, there is nothing I would appreciate more than a plan from you that will prove feasible and good for you as well as for me.
>
> "I am not arguing. I am looking for light on a mighty puzzling problem. You know the territory better than I do. If you will write me any suggestions that you care to, I will appreciate it...."

The next letter is part of Exhibit 311, is dated July 30, 1928, and is from Mr. J. P. O'Loghlin, General Manager for Canada of Fox Film Corporation Limited. It is addressed to Mr. Norman Smith, of Portland, Oregon, who had apparently applied to Mr. O'Loghlin for a situation. In part he says:

> "If you have been keeping in touch with Canadian conditions, as no doubt you have, you will realize that the days of requiring the services of a high-class salesman in Canada are over, as Mr. Nathanson practically controls every key centre in Canada, and this business is closed at Toronto en bloc, and when you get through with them, there are only the 'sticks' left."

Mr. O'Loghlin (his evidence, p. 6686) explains that he meant by the use of the word "sticks" the little towns in the West.

The third letter is dated May 31, 1929 (part of Exhibit 335) and is from Mr. Clair Hague, General Manager of Canadian Universal Film Company, Limited, and addressed to Mr. M. Van Praag, Universal Film Exchanges, Inc., New York. He says:

> "I am attaching herewith a very interesting set of sheets giving a comparison of the Nathanson houses in the different situations, and the oppositions in the same zones or towns, also including opposition houses that are not first run but second run in the same zone....
>
> "Toronto—The Allen circuit which, while they are not a part of the Nathanson circuit, nevertheless they are pooled with Nathanson in several of their houses. In Ontario you will note that there are only ten towns of 5,000 and over where Nathanson is not in at the present time.
>
> "Montreal—I have listed only the towns of 10,000 and over, due to the fact that towns under 10,000 cannot be gauged according to population, as a town of 7 or 8,000 in Quebec is really no better than a town of 3 or 4,000 in any other territory, so far as the percentage of theatre going public is concerned.
>
> "St. John—You will note that I have included the Imperial Theatre, which is a Keith house. There is an amalgamation on at the present time between the Keith-Orpheum circuit of Canada and Nathanson. You will note that there are twelve towns of 5,000 and over where Nathanson is not in, but before Fall several of these towns will be invaded by Nathanson, as they are just going into the territory. In fact, an exhibitor is in town now and I presume that something will

> be worked out where Nathanson will operate or take over their theatre. I also understand that they are now trying to negotiate with the Spencer circuit in that territory.
>
> (NOTE: Rialto, St. John, is now operated jointly by Radio-Keith-Orpheum (Canada) Limited and Spencer).
>
> "Winnipeg—You will notice in the city of Winnipeg, Morton and Kershaw houses. Kershaw houses are now over with Nathanson, and the Morton houses will be over in a short space of time. (Four Morton houses were acquired 17th April, 1929). There are only four towns in the Winnipeg territory (NOTE: This includes Manitoba and a large portion of Saskatchewan) of 5,000 and over where Nathanson is not in.
>
> "Calgary—(NOTE: This territory includes Alberta and part of Saskatchewan). There is only one town over 5,000 where Nathanson is not in. (The town referred to is Medicine Hat).
>
> "Vancouver—You will note 'Dewees' after some of the theatres. This is the Dewees-Nathanson combination, and on the houses marked 'Berry'—this is just a recent affiliation of the Berry circuit with Nathanson. There are no towns in Vancouver [sic: meaning no doubt British Columbia] of 5,000 and over that Nathanson is not in. This will give you the situation in Canada as pertains to the Nathanson circuit."

The document referred to as enclosed with this letter is not in the file, but the letter itself illustrates and fairly indicates the position of affairs, from the standpoint of a motion picture distributor in Canada, and I find this fully borne out by other evidence.

I find as a fact that Famous Players has in many important locations a monopoly of the moving picture business; in others, such a position as enables them to dominate the business, and this applies to practically all the towns and cities in Canada of 10,000 or more population where they or their affiliations have theatres, and almost with equal force this finding applies to practically all towns and cities where they are operating theatres.

By the control and operation of the above theatres, Famous Players is in a position to dictate to the exchanges in regard to the purchase, selection and booking of pictures, not only for its own theatres, but in a large measure in regard to the booking of and contracting for the pictures in the theatres which are in opposition to them, and it remains to be considered as to whether that influence is exerted and, if so, whether the exerting of such interest is to the detriment of the public.

It appears that Famous Players has combined by purchase, lease or other acquisition of the whole or part of the issued capital stock of some 75 other incorporated companies, and in nearly every instance the stock acquisition has involved control, by ownership of 50 per cent or more of the issued capital stock. In this way it practically controls 207 theatres in Canada, most of them as already stated being in the key and other larger centres. It has also, as I find, purchased, leased and otherwise acquired control over, and interest in, the whole or the part of the business of many other persons engaged in the moving picture business in Canada. I also find that it has entered into actual contracts, agreements, arrangements and combinations which have or were designed to have the effect of preventing or lessening competition in the sale or supply of motion picture films to the exhibitors, and through them to the public.

V. FAMOUS PLAYERS AND THE EXCHANGES

1. Famous Lasky Film Service Limited

As has been already pointed out, Famous Lasky Film Service Limited is controlled by and is in effect a subsidiary of Paramount Publix Corporation, the United States producer which controls Famous Players, and as Canada contributes at most 4½ per cent of the total revenue of the United States producers, I have no doubt whatever that the interest of Paramount Publix is in reality paramount; in other words that the interest of Paramount Publix is the first consideration.

In this connection it may be recalled that Famous Players obtained at its organization a franchise agreement from the predecessor of Paramount Publix, and this contract is still in force. It is dealt with on page 16, *et seq.*, of this report. It may be taken for granted, therefore, that so far as Paramount Publix pictures are concerned, it is useless for any competitor of Famous Players to compete for these pictures, except in so far as Famous Players do not wish to exhibit them in their theatres.

Paramount Publix is the largest producer of motion pictures, their program contemplating a release of 74 pictures during the season 1930-31, as compared with 52, the next largest producer.

Illustrations of how matters stand between Famous Players and this distributor may be had from part of Exhibit 196. A letter dated September 4, 1929, from Mr. J. L. Hunter, Manager of the Toronto Exchange, to Mr. C. Robson, in its concluding paragraph says, in speaking of a complaint from Mr. Robson that the picture "Varsity" had played the Park Theatre, Preston, ahead of the Regent Theatre, Galt:

> "'Varsity' was released in Ontario on October 27th, 1928, and after holding it ten months, we assumed that Galt had decided not to play the picture; consequently, we booked it to Preston.
>
> "Please let me know if it is your suggestion that we should hold pictures a greater length of time, as we have been in the habit of giving you six or eight months time in which to select and play a picture."

October 7, 1929, from Mr. Robson to Mr. Milligan, General Manager for Canada of Famous Lasky Film Service, Limited:

> "This will confirm our telephone conversation this morning, wherein it was mutually agreed that we will take the entire 1929-30 Famous-Lasky product for Belleville."

From Exhibit 179, letter of November 22, 1929, from Mr. Robson to Mr. Milligan, the concluding paragraph of which is:

> "In regard to the percentage and overage figure for the Princess Theatre, we will settle this just as soon as possible and advise you."

A letter December 30, 1929, from Mr. Robson to Mr. English, Famous-Lasky Film Service, Limited, Montreal:

> "I wired you on December 26th advising you that we were giving Robert and Trepanier temporary permission to do their own booking at the Capitol and Gaietie Theatres, Three Rivers. I stated that we would be using six pictures a week, and asked that you please co-operate with Robert and Trepanier in the same manner as though we were doing the booking direct from here".

In Exhibit 169, letter January 14, 1927, addressed to Mr. Milligan from Mr. Robson:

> "We would appreciate if you would give instructions that any feature picture booked to the Maitland Theatre, Ingersoll, and sold to the Griffin's Theatre, Woodstock, must play the latter theatre first before it plays Ingersoll. As you probably know, the towns are only about seven miles apart and are connected by rail, and Ingersoll is running a double bill. I would appreciate your co-operation and a line from you advising us that you will give this your attention".

A letter from Mr. Hunter to Mr. Robson, dated January 18, replies:

> "Mr. Milligan has handed me your letter of the 14th inst. wherein you request that pictures be dated in Woodstock before playing Ingersoll.
>
> "Your instructions will have our careful attention, and every effort will be made to comply with your request".

A letter, April 28, 1928, from Mr. Milligan to Mr. Robson, in which he says:

> "...You said the Famous Players Theatre organization was now vitally interested in the operations of the Allen houses, and for that reason you wanted every consideration given to them...Inasmuch as you personally had discussed this situation with me on several occasions, to do what you could to get better terms for the Allen houses, and inasmuch as the proposition was therefore discussed with Mr. Jules Allen in your presence, I become convinced that the whole affair would eventually break down into a Famous Players matter, and that something would have to be done to meet the requests which you had made at that time. I made the suggestion to Mr. Jules Allen that perhaps we could arrange our bookings to give Paramount pictures to the Allen houses on straight percentage basis the same as other Famous Players theatres......I have no definite way of knowing how this proposition will work out. It will probably mean less money per picture to us, but we hope to make up the difference in additional bookings....I wanted to go on record at this time, opposed to any such dealings which the Allens might make in this territory, unless either you or Mr. Nathanson can see in them some good for your own in their activities."

Letter, June 4, 1928, from Mr. Hunter to Mr. Robson, pointing out that the playing dates given to Paramount pictures in certain theatres were exceedingly small in regard to the number of possible bookings for the period under review, e.g., in the Alhambra and Bloor Theatres, while the total possible bookings for the 9 weeks' period were 45, only 9 pictures were actually booked, and this same condition exists in regard to 16 other theatres in more or less varying degree.

July 24, 1928, Mr. Robson to Mr. Hunter:

> "As per my telephone conversation with you of July 23rd, please do not sell the remainder of the unsold pictures in Belleville without first taking the matter up with me, as we are planning on opening a theatre there."

November 6, 1928, Mr. Hunter to Mr. Robson:

> "This will acknowledge receipt of your letter of November 5th with reference to the new theatre being opened at the Soo, and we would advise you that while we have sold them some product second run at the Soo, we will keep them sixty days behind the Algoma."

Exhibit 168, letter September 9, 1927, from Mr. Robson to Mr. Milligan:

> "We are enclosing herewith schedule of overages on 15 per cent pictures in respect of the various theatres operated by this Company or its subsidiaries.. Will you kindly notify all of your offices at once of the new figures that are to prevail.."

Letter September 13, 1927, Mr. Robson to Mr. Milligan:

> "I trust that this is quite clear to you and would ask that you at once notify all your offices which these changes affect, so that there can be no misunderstanding".

Letter September 30, 1927, Mr. Milligan to Mr. Robson:

> "Wish to acknowledge receipt of your letter dated September 27th .... I have gone over your figures for the 20 per cent pictures, and it is noted these terms differ quite a bit from the 20 per cent terms which Mr. Nathanson gave me. This all

> came up when Mr. Nathanson was talking to me about "Beau Geste", and he gave me the terms at which this picture would play over the circuit. I have since submitted Mr. Nathanson's 20 per cent terms to New York, and at the present time they are on record down there. The new 20 per cent terms which I have just received from you are entirely different at nearly every house.
>
> "Would thank you to kindly advise me to what pictures the 25 per cent terms will apply".

Letter October 6, 1927, Mr. Robson to Mr. Milligan, sets out the overage terms on certain pictures and concludes:

> "These figures are necessary on account of the change of policy in the operation of this theatre".

Exhibit 204, letter from Mr. Robson to Mr. Milligan, dated May 21, 1926:

> "When Mr. Nathanson made the division for Famous Lasky pictures, probably you will remember that the Ottawa split called for 17 pictures and the balance of the other houses where a spilt was given, 21 pictures. .... We have decided to change the policy at the Regent, Ottawa, and go to two changes a week. Will you therefore please make Ottawa the same split, i.e., 21 pictures, the same as the majority of the other houses".

Letter, June 22, 1926, Mr. Robson to Mr. Benson, Manager, Famous-Lasky Film Service, Limited:

> "We are figuring on taking over the Queen's Theatre in Niagara Falls, and would request that you do not sell next season's product without first taking it up with Mr. Nathanson".

Letter, December 16, 1926, Mr. Robson to Famous-Lasky Film Service:

> "As probably you are aware, we are building a theatre at Bloor & Runnymede, to seat 1,500, to be opened early this spring.
>
> "I wish you would let us have a list of available product exclusive first run in that zone .... and at the same time will you please get in touch with the writer before making any further disposal of your feature product".

The reply is dated December 18:

> "We are now selling the Revue, but have only sold them a few of the newer pictures, and you can rest assured that we will have all releases available for you at the date of opening".

2. Regal Films Limited

This Company is also controlled by Paramount Publix and distributes the pictures of Metro-Goldwyn-Mayer, Pathe and British International, and is managed by H. L. Nathanson, a brother of N. L. Nathanson, formerly Managing Director of Famous Players. It may also be taken for granted that the interest of Paramount Publix is to be the first consideration, both as to returns to it through Regal Films Limited and through exhibition of these pictures in Famous Players houses.

Metro-Goldwyn-Mayer propose to release, during the season 1930-31, 52 feature pictures; Pathe, 20 feature pictures; and British International, 20 feature pictures.

The following are informative as to the situation existing between Regal Films Limited and Famous Players:

From Exhibit 205 a letter from Mr. Robson to Mr. Kauffman of Regal Films, Toronto, April 9, 1926:

> "Ypres will be on the basis of a straight 20 per cent in Victoria, B.C. This is as instructed by Mr. Nathanson yesterday."

June 22, 1926, letter from Mr. Robson to Mr. Kauffman of Regal Films:

> "We are negotiating to take over the Queen's Theatre, Niagara Falls, and would request that you do not sell your next season's product without first getting a release on it from Mr. Nathanson."

Letter July 30, 1926, Mr. Robson to Mr. Kauffman:

"Mr. Nathanson has given permission to sell one Chaney, one Shearer and one Marion Davies, in Welland, and Peterboro, but he would not consent to giving up one each of these stars' pictures in Owen Sound, Kitchener, or the Danforth or Junction zones."

Letter November 22, 1926, Mr. Robson to Mr. Kauffman:

"I am in receipt of your letter of November 17th, and note that the Metro-Goldwyn 1926-27 product is sold to the Greenwood Theatre. Please do not sell the Producers' pictures without first taking it up with us—or 'THE FOUR HORSEMEN' and 'EVERY MOTHER'S SON', as we will certainly want these two."

Letter November 27, 1926, Mr. Robson to Mr. Kauffman:

"Mr. Nathanson's instructions are that you are not to sell any Producers' pictures in the Classic zone. Kindly be guided accordingly."

Letter November 27, 1926, Mr. Robson to Mr. Kauffman:

"Mr. Nathanson advises that 'EVERY MOTHER'S SON' is to be played on a straight 15 per cent basis everywhere."

Exhibit 163, letter February 10, 1927, from Mr. Robson to Mr. Kauffman:

"In reference to the film rental of Lon Chaney in 'TELL IT TO THE MARINES' in Montreal, while I know that the contract calls for 20 per cent to a certain figure, if that amount is paid, owing to the very poor business that the picture did in Montreal it will only permit us to break even, and under those circumstances we feel that New York should be satisfied with a flat rental of $2,000. At that price we do make a few dollars."

Letter March 16, 1927, Mr. Robson to H. L. Nathanson:

"Mr. Nathanson has set a flat rental price on 'THE FIRE BRIGADE' in the Capitol, Montreal, of $1,500. He has written a letter explaining the above price to Mr. Saunders and we have instructed Harry Dahn to pay this amount."

Letter of April 14, 1927, from Mr. Robson to Mr. H. L. Nathanson:

"We expect to have our Runnymede Theatre open at an early date, and would request that you make no further division of pictures in that zone, without first taking it up with our company."

Letter June 8, 1927, from Mr. Robson to Mr. H. L. Nathanson:

"Will you please eliminate Woodstock and Niagara Falls from the list of towns in which you will sell all the P.D.C. product, saving for us the 10 special pictures, and increase St. Catharines from 10 to 20, on the split which we gave you this morning."

Letter July 4, 1927, from Mr. Robson to Mr. H. L. Nathanson:

"We are figuring on changing the policy of our theatres in London, Welland and Brantford, and would request that you do not dispose of any of your 1927-28 product in any of the three above mentioned cities, except London, Metro-Goldwyn, without first discussing it with us."

Letter September 9, 1927, from Mr. Robson to Mr. H. L. Nathanson:

"We are enclosing herewith, schedule of overages on 15 per cent pictures in respect of the various theatres operated by this Company or its Subsidiaries.

"Will you kindly notify all of your offices at once of the new figures that are to prevail."

Letter November 29, 1927, from Mr. Robson to Mr. A. Cohen:

"I spoke to Mr. Nathanson about 'THE BIG PARADE' playing Niagara Falls, Ont., and Sault Ste. Marie at 50 cents. The reason we are unable to play it at the dollar road show basis is on account of the picture having played Niagara Falls, N.Y., and Sault Ste. Marie, Mich., at 50 cents. He said he would settle the rental terms in the Algoma Theatre, Sault Ste. Marie, and Queen Theatre, Niagara Falls, after the engagements, and that it is Okay to go ahead and book the picture in."

Exhibit 171, letter January 13, 1928, from Mr. Robson to Mr. H. L. Nathanson:

> "The price of 'THE BIG PARADE,' in Windsor, where it recently played the Palace Theatre, is $600. The price of LONDON AFTER MIDNIGHT, ANNIE LAURIE, and THE GARDEN OF ALLAH, which is booked for three days at the Capitol Theatre is $300 each, as per Mr. N. L. Nathanson's instructions."

Letter July 12, 1928, from Mr. Robson to Mr. Henry Nathanson:

> "This will confirm our understanding of to-day to the effect that you will not sell Regal product in Owen Sound, without first ascertaining if we can use the pictures."

Letter of August 3, 1928, from Mr. Robson to Mr. Henry Nathanson:

> "The price of FORBIDDEN HOURS in the Capitol, Montreal, as set by Mr. Nathanson, is $1,200. This picture is playing with the Tunney-Heeney fight pictures."

Letter of September 12, 1928, from Mr. H. Nathanson to Mr. Robson:

> "In some of the theatres, which includes some of the better houses such as Chatham, we have been dating pictures nine and ten months behind release date. I think it is bad business to do so. . . . The same applies also to a lot of other situations, which get the Toronto newspapers. Therefore if you can date up a large number of the better 1927-28 product during the month of October, we will forget last season's product entirely and book only the 1928-29 pictures after the first of November."

Letter from Mr. O'Connor, Branch Manager Regal Films at Toronto, to Mr. Robson, dated September 25, 1928, speaking of 16 undated M.G.M. pictures at the Soo, says:

> "The whole of 1927-28 product of M.G.M. was reserved for the Algoma theatre, Soo. Some time ago we could have disposed of these pictures in the Soo.
>
> "We would appreciate hearing from you just what pictures of the above list will be played in the Algoma theatre, and we will then make an effort to dispose of the remainder otherwise in the Soo, although we think that, at this late date, there is very little chance of us selling same."

Letter September 27, 1928, from Mr. Robson to Mr. O'Connor:

> "I have your letter of the 25th, giving a list of 1927-28 pictures, which have not played the Algoma-Sault Ste. Marie. I should be glad if you would endeavour to sell all of these pictures in the Sault, as I do not expect that we shall be able to use them."

Exhibit 195, letter March 19, 1929, Mr. Robson to Mr. H. Nathanson:

> "It is O.K. to sell the following pictures to the Avalon, providing there is 40 days' protection after either the Regent or Imperial."

This refers to pictures to be shown in Ottawa.

Letter from Mr. H. L. Nathanson to Mr. Robson dated June 14, 1929:

> "I note the sound terms that you have set for the Casino Theatre, Halifax, and I am quite sure the producers will question these terms. As you know, we have played pictures in this theatre on percentage in the past and they have a pretty good idea of the business this theatre can do. . . . In the past you have set these terms without consulting this office, and they feel they are entitled to some say as to what the terms should be. After all it is their product and they have the privilege of either accepting or rejecting the terms."

Letter August 12, 1929, from Mr. M. M. Davis, Branch Manager Regal Films, at Montreal, to Mr. H. L. Nathanson, showing a very active interest of Mr. Davis in the acquisition of theatres for Famous Players.

Letter August 14, 1929, Mr. Davis to Mr. Robson on the same subject.

Letter August 22, 1929, from Mr. Robson to Mr. H. L. Nathanson:

> "I am advised that Regal Films sold The Sophomore to the Princess Theatre, Montreal, without first asking if we could use it in any one of our four houses. I really think some mistake must have been made—surely Maurice Davis wouldn't do this without first securing our consent—and I do not think it fair on your part to approve of a contract, if this has been done, without first asking someone here in the office if we wished to use the picture."

Letter September 6, 1929, from Mr. Robson to Mr. Abe Smith, Regal Films, Saint John, N.B.

> "Thanks for your letter of September 3. For the time being we will just have to forget Moncton. It is possible I might have been able to make a deal had Mr. Winter been in town when I passed through, but with the product now sold there by yourself and Famous-Lasky we will have to leave it over until we develop further in the Maritime Provinces."

Letter September 30, 1929, Mr. H. L. Nathanson to Mr. Robson:

> "Re Palace—Sydney
>
> "I am herewith suggesting a Metro split for this situation as follows:—"

and the totals are set out.

> "This list comprises 22 of the smaller pictures which Metro are releasing this year. Seven of these pictures are in synchronized versions only and all of the specials have been left out."

This letter indicates that the opposition houses are not getting any of the specials.

Letter October 14, 1927, from Mr. Robson to Mr. H. L. Nathanson:

> "Of course we expect you will sell certain of your product to the other theatres in Saint John, but I would ask that before you take a definite contract you submit the proposed list of pictures to us."

Letter October 22, 1929, from Mr. H. L. Nathanson to Mr. Arthur Cohen re splits on the M.G.M. product:

> "We have found it difficult so far this year to sell any splits to the opposition theatres due to the fact that exhibitors are very careful in their selection of pictures because of the high prices they are forced to pay for sound. Rather than buy the smaller pictures we can offer them after the Famous Players have reserved for themselves the bigger attractions, they have preferred to do business with some of the smaller Exchanges."

Letter from Mr. H. L. Nathanson to Mr. Robson dated November 22, 1929, re Sydney:

> "This is about the worst booking situation on the Famous Players circuit and I do not think that it is entirely fair to us to expect us to hold out all of our good pictures and give us about one booking a month, which has been the case."

Letter December 20, 1929, from Mr. Robson to Mr. Henry Nathanson, Regal Films:

> "In regard to Chatham, all I can say is that if you sell any of your product there I know it will work a hardship on us.
>
> "We hope to have the Princess Theatre wired some time in February—if not the latter part of January. This will give us two wired houses, and we should be in a position to use all your product. Therefore I again ask you not to sell your product in this town."

Exhibit 343: Letter dated March 22, 1929, from Mr. C. C. Kenning, local branch manager Regal Films at Vancouver, to Mr. H. L. Nathanson:

> "I received a wire from McMordie, Prince Rupert, this morning stating that the Westholme Theatre will be closed indefinitely after March 30.
>
> "Mr. Muir is in Prince Rupert and no doubt some sort of a deal has been made with McMordie as he asks us to cancel all bookings after that date and arrange for new bookings with the B.C. Paramount Theatres."

This theatre was closed by agreement with McMordie dated March 21, 1929. A reply dated March 27, 1929, from Mr. H. L. Nathanson to Mr. Kenning, in which he says:

> "I believe that some sort of a deal has been arranged between B. C. Paramount Theatres and McMordie.
>
> "Therefore there is nothing else that we can do with Mr. McMordie's contracts but cancel them, giving as a reason that the house has changed hands, but do not mention the Famous Players."

On May 7, Mr. H. L. Nathanson writes to Mr. K. M. Leach, Strand Theatre, Calgary:

> "Hilly Cass (local manager of Regal Films at Calgary) has written me that you would not consider any splitting figures on pictures which you are playing on the 15 per cent basis from us, also that you have advised him that the Strand is not part of the Famous Players circuit.
>
> "If that is the case, how do you figure that you can play pictures on a 15 per cent basis from us. There are no such terms as 15 per cent for any independent houses in Canada and the 15 per cent arrangement is made by the Producers with the Famous Players 100 per cent owned theatres, or with their affiliations. . . . . I have instructed Cass that unless you agree to the overage terms, to take out all bookings. If you will not be reasonable in your dealings with us we will have to try to sell some other run in Calgary."

On June 12, 1929, Mr. Jules Allen, manager Premier Operating Corporation Ltd., writes to Mr. H. Nathanson:

> "Of course at the time we agreed to sign the contract for the entire output, we were naturally under the assumption that as in the past, there were a certain number of unsuitable pictures that would not be played and would be cancelled out on the expiration of the contract."

In his reply Mr. H. Nathanson, on June 13, 1929, says:

> "As I explained when we signed the contracts we cut the price for Leamington about 50 per cent below previous prices received in this situation. The previous exhibitor was never given the privilege of cancelling any pictures, and you can understand how difficult it would be for me to explain to Metro that not only was the price of pictures cut 50 per cent but that you were permitted to cancel over half the product."

On August 1, 1929, Mr. Hayner, General Sales Manager, Regal Films Ltd., writes to Mr. H. O'Connor, branch manager, Toronto, of Regal Films:

> "Confirming our recent telephone conversation please note that Famous Players Canadian Corporation are completing their arrangements to take over the Belle and Regent Theatres in Belleville; therefore, do not negotiate for our 1929-30 M.G.M. product in this city unless otherwise advised."

On September 20, 1929, the manager of the Canadian Theatre, Quebec City, wrote to Mr. H. L. Nathanson:

> "I am sorry to note that you cannot give me a release with 'On With the Show'...
>
> "With the small seating capacity I have, and even with big pictures for a week stand, I am no opposition to the Aud, as they change twice a week and play vaudeville and even last night, the Aud was packed to the roof and I was turning people away myself, so there is room for both of us and any business I secured would not affect anybody.
>
> "For Famous Players own protection, it would be better to let me have some money-getting pictures, and keep the crowd up this end of the town instead of letting them go down to Bernier's house.
>
> "Anyhow—see what you can do—I feel sure that something can be arranged, even if I had to kick back some of the profit and a weekly booking fee to Famous.
>
> "I will certainly appreciate it very much if you can help me out."

On September 30, 1929, Mr. H. L. Nathanson writes to Mr. A. R. Smith, local manager at Saint John for Regal Films:

> "In regard to your letter of recent date addressed to Mr. Hayner, re Metro split for Sydney, might advise that I discussed this matter with Mr. Robson to-day and I am herewith listing twenty-two pictures which you can sell to the opposition. . . . .

> "Of course Famous Players would not release any of the specials with the exception of MYSTERIOUS ISLAND, but in my opinion the exhibitor has a very satisfactory group of pictures."

On October 7, 1929, Mr. H. L. Nathanson, writing to Mr. S. J. Dunning, The Park Theatre, Verdun (United Amusements house), and speaking of a Mr. Cytrynbaum, operator of the Century at Cote St. Paul, says:

> "It doesn't seem fair to this man to forget about him entirely just because he is put in an unfortunate position because of inability to wire his theatre.
>
> "I understand you have a large amount of pictures bought for the Century and if that is the case, possibly you could arrange to split the product with this exhibitor. In other words, give him half of the Metro product and half of the Pathe. I am only trying to do the right thing, Mickey, and I know you would not do this man an injustice. Therefore, if it is agreeable to you I will return the contracts to the Montreal office and will arrange a split whereby you get half and the Perron Hall will get the balance. Of course I will see to it that your split contains the better pictures."

On September 17, Mr. Kenning writes from Vancouver to Mr. H. L. Nathanson, in part, as follows:

> Dewees now proposes to make some sort of arrangement with the five leading exchanges—Regal, Famous Players, First National, Fox and Universal—to get exclusive use of their product for the Rex, and the Royal Theatre run by Nichols Dewees proposes to bring Nichols into the agreement, Nichols to close the Columbia later on when the other opposition theatres have been forced to close. Dewees agrees to raise the admission prices in the Rex and Royal to 25 cents, when the opposition theatres have been closed. He will then be able to pay us better rentals as he states that the two theatres left open will be able to play to just as many people as are going to all the theatres at the present time, and they will be paying much more for their entertainment."

On May 7, 1929, Mr. H. L. Nathanson wrote to Mr. Saunders of Metro-Goldwyn-Mayer Pictures, New York, in regard to the Granada, Sherbrooke:

> "Please rest assured that we are taking no 25 per cent terms from any independent theatres in Canada."

On August 26, 1929, Mr. H. L. Nathanson wrote Mr. Saunders in reference to trouble with exhibitors who had closed for sound product, cancelling the contracts before they have been approved by the Head Office, in which he says:

> "I think it advisable, therefore, that I instruct our branches to wire in the contracts to this office and if the prices and playing arrangements are satisfactory we will immediately wire approval of the contract to the exhibitor. This will save a lot of time and unquestionably forestall cancellations from exhibitors.
>
> "This of course does not apply to Famous Players Theatres, but to independent exhibitors only."

3. R.K.O. DISTRIBUTING CORPORATION OF CANADA LIMITED

This Company distributes "Radio" and/or "R.K.O." pictures and the parent company in New York is in close affiliation with the Radio Corporation. The mutual interest of this distributor and Famous Players is apparent when one considers Exhibit 29, the agreement for the formation of Radio-Keith-Orpheum (Canada) Ltd., involving, as it does now, eight theatres which are jointly operated by Famous Players and the parent organization controlling this Canadian distributor. Famous Players has, by reason of this connection, considerable influence with Radio-Keith-Orpheum Distributing Corporation of Canada, Limited, in addition to the influence which it might ordinarily exert by reason of its large purchasing power.

In Exhibit 166, Mr. T. W. Brady, Canadian General Representative of Producers Distributing Corporation (Canada) Ltd., writes to Mr. Robson (this company was then selling R.K.O. pictures) under date of May 12, 1927:

> "Up to the present writing, we have not received contracts from the Tivoli, Toronto, which played the picture May 2, Capitol, Kingston, which played the picture May 4 and 5, or the Griffin's, St. Catharines, which is playing the picture May 9, 10, and 11."

On September 12, 1927, Mr. Robson notified Mr. Brady that "these terms went into effect on Monday, September 5, 1927."

Exhibit 197: On May 20, 1929, Mr. W. H. Mitchell, Branch Manager R.K.O. Distributing Corp'n (Canada) Ltd., wrote Mr. Robson as follows:

> "We received a telephone call from your booking department requesting that THE YELLOWBACK and THE BIG DIAMOND ROBBERY be removed from June 14 and 28 respectively in the Classic Theatre, Owen Sound, the reason for this being 'on account of house going into sound June 3.'
>
> "The interpretation I presume is that we are out. As there are 8 other pictures besides these to play would you kindly inform us what are your wishes relative to these subjects."

On August 24, 1929, Mr. P. C. Taylor, General Manager R.K.O., wrote Mr. Robson:

> "I quite understood that you were well tied up at the times I called you before leaving Toronto. My only reason for writing you was that I wanted to get an idea from you as to what pictures you would play in the Maritime situations so that I could instruct our St. John office accordingly, and they could then go out and sell in these cities."

On August 26, 1929, Mr. Robson wrote to Mr. Taylor:

> "I might say that I was in Quebec on Saturday and got the shock of my life when I saw what is probably one of your outstanding pictures, THE STREET GIRL, playing in an opposition theatre."

On November 30, 1929, Mr. Taylor wrote Mr. Robson:

> "We have been holding our product out for you in Vancouver, Winnipeg, Montreal and certain other key spots, and even at this late date, we have no written commitments from you as to how many pictures you will play in these situations. We know that practically every other Company with whom you are dealing, have definite commitments. Don't you think it is about time we got together, and ironed out what you intend to do for us in these towns?"

4. FOX FILM CORPORATION LIMITED

This distributor is controlled by the Fox Film Corporation of the United States (Evidence, p. 6538), and it expected to release 48 pictures during the season 1930-31.

Their best customer in Canada is Famous Players Canadian Corporation (Evidence of Mr. O'Loghlin, p. 6539),

> "because they control the better class of theatres in Canada and they give our productions very large showings when we close with them, and taken altogether we find them the best customer in Canada to do business with."

This exchange has had commitments with Famous Players each year beginning with the season 1927-28.

In speaking of the manner of doing business with the independent exhibitor, Mr. O'Loghlin's evidence, on page 6546, is as follows:

> "Q. The fact remains that the independent exhibitor had to take the list that was left after Famous Players had picked it over, with the exception you now make?
>
> "A. Well, he did not have to take it sir.
>
> "Q. If he wanted any.
>
> "A. If he wanted to do business with my exchange he would have to take what was left or let me battle it out with Famous Players."

On page 6548 Mr. O'Loghlin says:

> "We offered all our product to Famous Players."

Mr. O'Loghlin states, on page 6636:

> "We are now—well, there is a new, wholly and entirely new, personnel conducting our business to what there was a year ago. I am talking about since Harley L. Clarke came into our business, and there have been certain deals in the United States with the Publix people as regards playing of product in each other's theatres. Now in the United States the Publix have to pay the Fox Film Cor-

> poration for any pictures they do not use, and the Fox Film Corporation have to pay the Famous-Lasky exchange for any pictures they do not use; and the same thing applies to Canada, just starting this year. Previous to that we had to—we cancelled out, but that no longer is necessary."

Exhibit 202: On May 28, 1926, Mr. O'Loghlin wrote Mr. Robson listing thirty theatres in which there were, what are called, delinquencies, i.e., where pictures had been contracted for and not played, or dated in. This situation apparently existed each year until the arrangement above spoken of. A letter was written on the same subject by Mr. O'Loghlin to Mr. Robson on October 6, 1926.

Exhibit 165: On April 11, 1927, Mr. Robson wrote Fox Film Corporation as follows:

> "We expect to have our Runnymede Theatre open at an early date, and would request that you make no further division of pictures in that zone without first taking it up with our company, as we will be in the market for a considerable number of pictures."

On May 5, 1927, Mr. Robson wrote Mr. O'Loghlin:

> "I understand that in the very near future a change of the picture situation may be developing in the West Toronto zone, and before you dispose of any of your product whatsoever in that zone, I wish that you would personally take the matter up with me. This is very important, and I would appreciate if you would discuss it with me the first time you are in the office."

Mr. O'Loghlin on May 10, 1927, acknowledges receipts of the above letter and says:

> "Be assured that this matter will be taken up with you as you suggest, before any of our product is sold in that zone."

On May 19, 1927, Mr. Robson wrote Fox Film Corporation Ltd.:

> "We are opening the Brant Theatre, Brantford, in August and desire that you do not sell any pictures in Brantford without first taking it up with the writer."

On June 17, 1927, Mr. Reid, Assistant Branch Manager, Toronto, for the Fox Film Corporation, wrote Mr. Robson:

> "Enclosed herewith please find supplementary contract reducing rentals of various productions booked to the Trent Theatre, Trenton."

This theatre had been acquired by Famous Players.

On July 7, 1927, Mr. W. C. Gehring, Branch Manager in Toronto for Fox Film Corporation, wrote Mr. Robson:

> "In accordance with your request of July 4, the theatres in London, Welland and Brantford will not be canvassed until after the completion of our negotiations with you."

On September 9, 1927, Mr. Robson wrote Mr. O'Loghlin in regard to a new schedule of overages on 15% pictures. This was the same letter as written to various other exchanges and requested that Mr. O'Loghlin notify all his company's officers at once of the new figures that are to prevail.

On October 25, 1927, Mr. Gehring wrote to Mr. Robson:

> "ST ELMO is being held for the Hippodrome for Nov. 7th and for Nov. 21st. No price has been set on this picture and it has been suggested by Mr. N. L. Nathanson that we wait and see what the picture does before setting the price———"

Exhibit 190. On December 30, 1929, Mr. Robson wrote Mr. O'Loghlin:

> "Just a line about double bills in Toronto. I notice that the Park is playing BIG TIME and ONE HYSTERICAL NIGHT, a Universal picture, on a double bill, and I trust that you can stop this double billing in Toronto, as it means the ruination of the picture business."

On December 27, 1929, Mr. O'Loghlin wrote Mr. Robson in part as follows:

> "From the above summary you will perceive that we have received one out of every nine dates First Run in Montreal since October 1st, and all of these dates with

> the exception of one, has been in the Imperial and Loew's, whereas the other Exchanges have been getting the 'cream' at the Palace and Capitol, and as you know 'sour milk' is a bad diet to be taken continually."

On December 26, 1929, Mr. O'Loghlin wrote Mr. Robson in regard to three pictures:

> "Will you kindly let me know at the earliest possible moment whether or not you care to use any or all of these pictures at the Hippodrome, as if not, it is my intention to offer them to Loew's Theatre?"

On October 9, 1929, Mr. O'Loghlin wrote Mr. Robson:

> "I have your letter of the 8th instant, and as requested therein I am to-day instructing our St. John Office to hold for you second run in Halifax our outstanding Box Office Attractions."

On August 26, 1929, Mr. O'Loghlin wrote Mr. Robson:

> "Regarding your request for a reduction on the synchronized score charge and the price of the Shorts at Loew's Theatre, Montreal, please be advised that I am also acceding to your request in this instance, but I trust that there will be a stop somewhere, as, while I am at all times desirous of co-operating with you, my records are commencing to look like the altered map of Europe after the Great War."

On June 15, 1929, Mr. O'Loghlin wrote Mr. Robson:

> "For some time past your Booking Department, no doubt from instructions from those higher up, have been indulging in the practice of notifying me of the cancellation of Feature dates on Dialogue Pictures in various Theatres, but have neglected, either through design or otherwise, to supply us with replacement dates for the dates cancelled.
>
> "I think that you know by this time that I am always willing to co-operate with you, and the matter of cancellation of dates is part of this co-operation, but I think when you ask us to defer playing a picture, you should at least provide us with a new play date at the time of cancellation of the present play date."

On May 15, 1929, Mr. Robson wrote Mr. O'Loghlin re GHOST TALKS in the Imperial, Ottawa:

> "I trust that you can sell this picture, and on the assumption that you will be able to I have taken it out week of June 8th."

On February 4, 1929, Mr. Sichelman, one of the executives of the Fox Film Corporation, New York, wrote Mr. O'Loghlin:

> "I cannot impress upon you too strongly the necessity of getting quick action from the Nathanson people on the delinquency of dates. Nothing is more important right now than securing of the proper dates on the pictures that they are delinquent on.
>
> "Nobody knows any better than you how big a percentage of your territory Nathanson represents and if we do not get a satisfactory volume of business from his circuit your business for the season is certainly going to suffer accordingly."

On February 6, 1929, Mr. O'Loghlin wrote Mr. Robson:

> "At the commencement of the season you selected 12 pictures for your proposed new theatre in North Bay, and of course none of these pictures have as yet played, on account of the theatre not being ready.
>
> "What I would like you to inform me is whether or not you will require us to still retain these 12 pictures for you, as if not we will endeavour to sell them elsewhere in North Bay."

On February 4, 1929, Mr. O'Loghlin wrote Mr. Robson in regard to the delinquent situation as prompted by a letter to him from Mr. Sichelman.

Exhibit 307. Letter from Mr. O'Loghlin to Mr. Sichelman, Fox Film Corporation, New York, dated September 3, 1929:

> "Please be advised that the following are the terms for the Capitol Theatre, Three Rivers, Que., which is a theatre recently acquired by the Nathanson organization:"

and there follows a series of percentage terms.

On September 23, 1929, letter from the General Sales Manager, Fox Film Corporation, to Famous Players, in which he says:

> "We realize where you have only one or two theatres it is impossible for you to play all Fox product that is released, but in situations such as Montreal, Toronto, Hamilton, Winnipeg, Vancouver, Calgary and Edmonton, where you operate or control more than two theatres, we expect promises made by the former Managing Director, Mr. N. L. Nathanson, to be carried through as near to as promised as it is possible to do consistent with good business."

Telegram October 30, 1929, from Mr. Sichelman to Mr. O'Loghlin:

> "March submits proposition Strand Sydney opposition Famous Players covering seventeen new seasons pictures stop while price is satisfactory our understanding Famous Players has first choice fifteen pictures How can they select if we approve Strand contract Advise."

Telegram October 30, 1929, Mr. O'Loghlin to Mr. Sichelman:

> " Retel Strand Sydney proposition does not interfere with Famous Players selection Sydney so if proposition satisfactory otherwise suggest you wire March acceptance immediately as he has early date on same."

On August 30, 1929, Mr. O'Loghlin wrote Mr. Grainger in part:

> "Our records show that during the season 1928-29 we received from the independent accounts a revenue of $419,222 and from the Famous Players Canadian Corporation a revenue amounting to $462,306 and this latter amount being arrived at without any revenue coming from them in the St. John territory during that season, as they had no theatres there at that time.
>
> "During the season 1929-30 just closed we received from the Independent theatres revenue of $534,875 and from the Famous Players Canadian Corporation revenue of $669,269."

On May 20, 1930, Mr. Sichelman wrote Mr. O'Loghlin in part as follows:

> "You wrote on April 28th advising percentage terms for two more of the Famous Players Canadian Corporation namely, Capitol theatre Kamloops, B.C. and the Empress theatre, North Battleford, Sask.
>
> "We note the terms quoted are straight percentage arrangement whereas, according to our records, we previously sold these theatres when owned independently, contracts on flat rental basis, and there still remains a number of pictures at each point to be played."

On June 27, 1930, Mr. O'Loghlin wrote Mr. Sichelman in part:

> "However, it appears now that Famous Players Canadian Corporation made a a lot of changes in their score charge prices and which were accepted by the various exchanges with whom they do business in Canada, but a copy of this revised schedule was never sent to me until to-day."

On August 29, 1930, Mr. O'Loghlin wrote Mr. Sichelman:

> "Mr. Huber will be submitting to you a proposition for 1930-1931 features at the Regent theatre, Winnipeg; and in connection with this proposition, might say that I personally handled it with Mr. Huber, and I would recommend your accepting same.
>
> "In connection with this contract, you will note on same that it is for *eighth run* in the City of Winnipeg; and in reviewing all contracts with this exhibitor entered into in previous years, you will find that same called for second run Winnipeg; but the exhibitor is now forced to take this later run, due to the fact that the Famous Players Canadian Corporation insist on running the picture in their seven theatres in Winnipeg ahead of the Regent theatre."

On September 8, 1930, Mr. O'Loghlin wrote to Mr. Sichelman:

> "All pictures of the 1929-30 contracts which have so far been booked at the Photodrome and Victoria theatres, Toronto have played on the terms as signed by Mr. Ulster, and if we have to make any change in these contracts to percentage for the B & F Circuit, we will send you a supplementary contract to cover any changes so made."

On September 9, 1930, Mr. O'Loghlin wrote Mr. Sichelman, in reference to theatres of the Allen Circuit:

> "and which are affiliated with the Famous Players Canadian Corporation.......

> "You will also note that if we insist on their playing the old product in these three situations it will be necessary for them to cancel out the 1930-31 contracts which they have given us.....my recommendation would be to forget about the 1929-30 unplayed product and start out clean with these people on the 1930-31 releases...."

On September 10, 1930, Mr. Sichelman wired Mr. O'Loghlin:

> "Waiting reply my recent wire concerning Winnipeg Selling policy whereby exhibitors allowed privilege selecting anywhere from twenty-five to thirty-five pictures out of forty-eight stop Have never permitted this before only exception being Famous Players where they give you national deal."

On September 30, 1930, Mr. O'Loghlin wrote Mr. Sichelman:

> "*Regent-Sudbury* $2,750. This is for 18 pictures being balance of the pictures not selected by Famous Players Canadian Corporation for their new theatre, the Capitol. Previous to this year the Regent theatre bought 100 per cent from us.
> "*Eclipse-Toronto* $2,585. Last year we sold this account 100 per cent but this year we had to give ten of our Bigger Pictures to the Parliament Theatre, which is affiliated with the Famous Players Canadian Corporation."

Exhibit 308. On July 16, 1929, Mr. Dippie, Branch Manager Fox Film Corporation at Vancouver, wrote Mr. O'Loghlin:

> "The Strand theatre at Chilliwack, B.C., was operated by a Mr. Geo. Sweetman. Mr. Sweetman turned over this theatre to the Berry Circuit in February, 1927. At the time the transfer was made the exchanges were informed by Mr. Berry that he was not assuming any of Sweetman's contracts.
>
> "Mr. Berry as you are doubtless aware is turning over his circuit to the Famous Players Canadian Corporation, and it develops that he, in his agreement with Sweetman, agreed to hold Sweetman harmless so far as film contracts were concerned ....I presume you will consider it good policy in view of the Berry affiliation with the Famous Players to cancel out these old contracts.........."

On July 22, 1929, Mr. O'Loghlin wrote to Mr. Dippie:

> "I have your letter of the 16th inst., with reference to the situation as pertaining to the Strand Theatre at Chilliwack, and I would suggest that you forget all about this matter, and if necessary put through a cancellation to the Home Office giving as reason 'Unable to supply as prints out of condition.'"

On July 5, 1929, Mr. V. M. Shorey, Branch Manager Fox Films at Calgary, wrote Mr. O'Loghlin in regard to delinquencies at the Capitol theatre, Lethbridge, in which he says:

> "............Under ordinary circumstances we would immediately go to arbitration to secure playing time on these delinquent subjects but inasmuch as Mr. Nathanson now has an interest in this theatre, I was just wondering if you would suggest placing the matter before the Board of Arbitration."

Mr. Dippie's reports dated February 8, 1930, show that, in reference to the Rialto theatre, Trail:

> "This house is oppisition to Liberty (Dewees circuit). We sell Rialto pictures Dewees does not want. Dewees so far bought 11 for Liberty (1929-30)."

In reference to the Colonial theatre, Vancouver:

> "Can only sell pictures not wanted by Capitol, Orpheum, Dominion, Strand or Pantages.'"

Exhibit 311. Letter January 19, 1927, Mr. O'Loghlin to Mr. E. C. Grainger, Fox Film Corporation, New York:

> "As I understand it the Dominion of Canada constitutes a 4½ per cent territory, which according to all moving picture statisticians is excess. What Canada should really be is not more than 4 per cent. In fact, it has been designated recently by an authority who has compiled statistics pertaining to Canada, as a 3·6 territory."
>
> "P.S. With Nathanson coralling all the key centres, Canada's possibilities are gradually becoming decimated, and cognizance of this should be taken by Home Office."

On April 5, 1927, Mr. J. A. Wilson, Branch Manager, Fox Films, Winnipeg, wrote Mr. J. R. Grainger, speaking of the Porth Arthur, Fort William, Regina, Winnipeg, Brandon, Moose Jaw and Saskatoon situations:

> "The basis on which these houses play our subjects is certainly not conducive to what is necessary from these centres to lift our business out of the mediocre to a

> worth-while standing. The difference is considerable, from week to week, from what we used to obtain from these centres. In the City of Winnipeg alone, there is a difference of approximately $400 to $750 on every picture played by them. In the Lyceum Theatre, prior to Nathanson taking over the booking thereof, we used to obtain from $500 to $2,500 first run. This year we have played two subjects in in there—THE LILY and THE RETURN OF PETER GRIMM. On the former we received as our share $264.52 and on the latter $180.02. This is an example of the prices we are obtaining all through the territory from these theatres and it is evident that they are not sufficient to bring this office from mediocrity to a successful weekly revenue."

On December 1, 1927, Mr. O'Loghlin wrote to Mr. J. R. Grainger, Fox Films, New York, in reference to the picture WHAT PRICE GLORY, played at the Uptown, Toronto, in which he says:

> "he has not as yet remitted us any money for this engagement, and, whether he is going to do so or not, time will tell. I do not want to ask him 'point blank' whether he is going to pay us our share or not, as it might give him an opportunity of saying 'no', and we will not lose anything by awaiting developments."

On December 2, 1927, Mr. O'Loghlin wrote Mr. Grainger in reference to "WHAT PRICE GLORY" stating that a cheque had been sent for $1,016.70. A postscript to the letter says:

> "I was certainly surprised to receive this cheque, as I figured he would try to get out of paying anything at all."

On March 6, 1928, Mr. Thomas, Western Division Manager of Famous Players, wrote Mr. O'Loghlin:

> "Please do not sell any pictures in Montreal after we have rejected them for the Palace or the Capitol until we are sure we are not going to play them at Loew's. These instructions are given me by Mr. Nathanson, who, upon his return from Miami, was very much perturbed to find that one of the Exchanges had sold a picture to another theatre, when this picture should have played Loew's."

On May 1, 1928, Mr. O'Loghlin wrote Mr. Sichelman in reference to cancellation of contracts for the Lyceum, Starland and College theatres, Winnipeg:

> "The facts of this case as submitted by Mr. Wilson are correct and I might further state that while the Famous Players Canadian Corporation had the booking of these three theatres last year, they had no authority to sign contracts on behalf of the theatres, and when this was explained to me I knew that there was no use trying to enforce their playing, as it would simply have created discord with us in the Nathanson Organization, and we would not have got any satisfaction."

On May 25, 1929, Mr. Thomas, Western Division Manager Famous Players, wrote Mr. O'Loghlin in regard to the claim made by Mr. Kershaw that he was buying pictures cheaper than Famous Players:

> "I certainly suggest that you carefully watch Vancouver and Winnipeg, because if my managers report to me that independents are buying cheaper than we are, I will immediately see that some first runs are cancelled and it does not take a blind man to see that one first run will offset twenty or thirty cheaper accounts. I do not want to put anyone out of business, but with the buying power we have in Canada, I am not going to have it thrown up to me that some other exhibitor can buy pictures cheaper than we can."

On January 7, 1929, Mr. O'Loghlin wrote to Mr. Grainger in part as follows:

> "Also, I would thank you to take up with Mr. Nathanson the question of percentages. Try as I might, and notwithstanding the repeated daily promises for the past three months, I have as yet been unable to secure from the Nathanson organization, the list of percentage terms on which they are playing our pictures, and they are simply remitting what they think they should pay........"

On August 20, 1929, Mr. Grainger wrote Mr. O'Loghlin with reference to the Regent Theatre, Winnipeg:

> "I have not as yet seen the proposition, but accepted your word that this contract should be immediately approved. I trust you are not running into difficulties with the Nathanson Organisation, as in view of the fact that we will get from the Nathanson Organization, this current year, nearly half a million dollars in revenue, we

> certainly do not want to do anything that will endanger our relations with them or cause them any annoyance."

Exhibit 312. A letter from Mr. W. J. Long, Manager of the Rialto Theatre, Edmonton, to Mr. O'Loghlin, in part:

> "It is unnecessary for me to bring to your mind that we have played with the Fox Film Corporation consistently in the three years that we have operated the Rialto Theatre. We have been content to accept what our opposition had decided not to play and it was with the thought in mind that Fox of all the exchanges would always treat those who played with them fairly that we have consistently co-operated one hundred per cent with them........ I might say in conclusion that if it turns out we are not to get your product after my efforts in the course of the past year I will have very little confidence and will almost believe that there is no such thing as fair play in this business."

NOTE.—This letter illustrates Mr. Long's anxiety about getting pictures.

Mr. O'Loghlin in his evidence, page 6709, states that Mr. Long did not buy because he could not get 100 per cent, and spot booked a few pictures during the season.

Exhibit 313. On June 8, 1928, Mr. O'Loghlin wrote to Mr. N. N. Lawand, Confederation Amusements Ltd., Montreal, in part as follows:

> "When Mr. Grainger was in Toronto on May 19-20-1 he completed a deal with Mr. Nathanson on next year's Product for their entire circuit, and this as you will appreciate, includes a Nicholas Circuit in Montreal, and such being the case I regret to inform you that I cannot talk business with you."

Exhibit 314. On February 18, 1928, Mr. Sichelman wired Mr. O'Loghlin in part as follows:

> "Dippie writes us Nathanson circuit delinquent every situation Vancouver Territory future dates unsatisfactory you realize Mr. Fox instruction set all delinquent accounts on Film Board. Therefore without fear or favour you should immediately do this not only in Nathanson Circuit but every exhibitor Dominion territory."

NOTE.—No action was taken in regard to the Famous Players' theatres.

On March 14, 1929, Mr. Gehring, Branch Manager at Toronto, wrote Mr. Sichelman regarding a change in policy in the Capitol theatre, Cobourg, by which pictures were played two days instead of three; he says:

> "This being a Nathanson owned house, we allowed the alteration and request that you change your records accordingly."

On March 18, Mr. Gehring wrote the same kind of a letter to Mr. Sichelman in regard to changes in the Algoma Theatre, Sault Ste. Marie, the Capital Theatre, Cobourg, and MOTHER KNOWS BEST in the Classic Theatre, Owen Sound.

5. VITAGRAPH LIMITED

This company distributes the products of First National Pictures Inc., Warner Bros., Pictures Inc., and Vitagraph Inc.; the latter under the name of Vitaphone. First National had a commitment with Famous Players for the seasons 1929-30 and 1930-31. They expected to release thirty-five feature pictures for the 1930-31 season. First National also had franchise agreements with various exhibitors including Dewees, and the former owner of the Classic Theatre, Toronto, now a Famous Players house.

Warner Bros. had commitments with Famous Players for the seasons 1928-1929, 1929-30 and 1930-31 and they expected to release thirty-five feature pictures for the season 1930-31.

Exhibit 160.—On January 19, 1927, Mr. Robson wrote Warner Bros.:

> "Please be advised that Theatrical Enterprises Limited has taken over the Trent Theatre, Trenton, as from February 1, 1927. We would appreciate if, before disposing of any further film product in Trenton, you would get in touch with the writer."

Mr. J. F. Meyers, Branch Manager in Toronto of Vitagraph Inc., replied on January 20 to Mr. Robson:

> "We will be sure to get in touch with you before disposing of any more of our pictures in Trenton and trust we shall be able to interest you in a number of our productions."

On April 13, 1927, Mr. Meyers, Branch Manager, wrote Mr. Robson noting that the Runnymede Theatre will be open at an early date:

> "We will be pleased to communicate with you before endeavouring to sell any of our pictures in that districts."

On May 20, 1927, Mr. Meyers wrote Mr. Robson:

> "We will withhold selling any picture in Brantford until we first offer our productions for your approval."

On August 8, 1927, Mr. B. F. Lyon wrote Mr. Robson:

> "Will you be kind enough to have all particulars ready for us with regard to split figures on Extended Runs and definite decision regarding towns such as London, Welland and Hamilton and so forth, wherein as you requested we are still withholding sale of our products."

On August 23, 1927, Mr. Lyon wrote Mr. Robson:

> "Am leaving with your secretary the contracts for the Circuit, on some of which we have not entered the percentages because of the changes in split figures which you say Mr. Nathanson contemplates making."

On August 23, 1927, Mr. Robson wrote Mr. N. L. Nathanson:

> "It is the wish of Warner Bros. to co-operate with you in every respect. and we are still withholding the sale of our product while other companies who have disregarded your wishes are reaping the benefit of our loyalty to you."

On September 9, 1927, Mr. Robson wrote Mr. B. F. Lyon, Warner Bros., in regard to the same circular letter as written to other houses on the same date in regard to overages on 15 per cent pictures.

Exhibit 175. On May 11, 1928, Mr. B. F. Lyon wrote Mr. Robson in regard to holding pictures in the Royce theatre district, or the St. Clair zone in Toronto, and in North Bay, Belleville and a second run house in Ottawa. He says:

> "The local manager has been duly informed and we will of course be glad to co-operate with you, but we do not want a repetition of what occurred last season. . . . . As a result of the delay in getting prompt action from your Circuit, we found ourselves shut out of a great many towns and situations.
>
> "Naturally you can depend upon us to work with you in every way possible, but do not ask us to wait until everyone else has had time to sell their product in the town before you make your decisions with regard to Warner pictures."

Exhibit 193. On March 13, 1929, Mr. Berman, special representative of Warner Bros., wrote Mr. N. L. Nathanson giving him information in regard to a proposal by local business men in Chatham to build a theatre in that town.

On June 12, 1929, Mr. Lyon wrote Mr. Robson acknowledging receipt of his two letters of June 10th relative to

> "communicating with you before we sell our next season's product in the cities of Halifax and Sydney, Nova Scotia.
>
> "This we will gladly do provided you don't keep us waiting until Christmas for your choice of our product."

On August 27, 1929, Mr. Lyon wrote Mr. Robson in regard to playing first and second run in the Imperial Theatre, Ottawa:

> "We will be glad to co-operate with you, but please do not allow the subjects to grow whiskers before you make your choice."

On September 7, 1929, Mr. Lyon wrote Mr. Robson with reference to terms offered by him for the pictures for the Capitol Theatre, Three Rivers, Que.; he says:

> "I was not aware you had negotiated for a theatre in this town, and at the time of my last visit to Montreal we entered into negotiations for our product with Mr. Trow of the Imperial theatre, and I am now in receipt of a deal covering all of the coming season's product and including the unsold pictures of 1928-29.
>
> "The deal represents approximately $15,000 and Mr. Trow has heretofore been an excellent customer of Warner Bros.
>
> "Therefore I am withholding approval of this contract until I see you and am sure you will allow us to split up the product in such a manner that both Famous Players and Mr. Trow will be satisfied."

On September 24, 1929, Mr. Lyon wrote Mr. Robson:

> "I might add that we were finally able to convince the independent exhibitor in Three Rivers it was to his advantage to accept the split we arranged in your office."

On October 29, 1929, Mr. Lyon wrote Mr. Robson in reference to the GAMBLERS in St. John and setting in NOAH'S ARK, stating that he had held the GAMBLERS for five months, he adds:

> "You insist that we hold these pictures for you then at the end of six months you claim you cannot use them. . . .
>
> "We will make the changes you request."

Exhibit 203. On April 22, 1926, Mr. Robson writes to Mr. W. A. Bach, in reference to paying 20 per cent for IRENE in Peterboro; he says:

> "We feel that 15 per cent is ample for the picture when we take into consideration that we pay the rent of two theatres in Peterboro to keep them closed, which naturally increases the business at the Capitol."

On July 24, 1926, Mr. Robson wrote Mr. W. A. Bach:

> "Enclosed find the new list of overages and percentages for the season 1926-27, commencing September 1st, as set by Mr. Nathanson."

On August 13, 1926, Mr. Bach wrote Mr. Robson in reference to split in Owen Sound:

> "I have as you know, cooperated to the fullest extent with Mr. Nathanson and yourself in every spot, and in fact have acted just the same as if First National were in exactly the same position as Famous Lasky or Regal. But, this is one case where I feel that I want to insist upon a fair deal, and that you won't blame me."

On December 2, 1926, Mr. Robson wrote First National Pictures, Toronto, about the First National franchise granted to Joseph Cohen, Classic Theatre, Toronto, which had been assigned to Paramount Theatres Ltd.

Exhibit 167. Memorandum by Mr. Robson as follows:

> "On February 18 I 'phoned Mr. Bell of First National and stated that wherever possible we would play MACFADDEN'S FLATS and not to sell it anywhere without first ascertaining if we would use the picture, the terms I explained to him would be the usual percentage, and further told him that if the picture played the Princess Theatre, Montreal, we would be unable to use it anywhere on our circuit."

On September 9, 1927, Mr. Robson wrote Mr. Bell, First National Pictures, in regard to the overages on 15 per cent pictures, the same letter as written to the other exchanges.

Exhibit 191. On December 26, 1929, Mr. Robson wired Mr. Gorman, First National Pictures, Montreal:

> "We are going to three changes weekly at Capitol and possibly three weekly at Gaitie, Three Rivers, and will require all your pictures. Please wire that you are holding them."

On December 18, 1929, Mr. Bell wrote Mr. Robson in regard to holding all First National product for Saint John, N.B.:

> "I am quite in accord with the holding of our product for you in this town, but I think I am entitled to a little better representation, especially in a month that you have promised us assistance, than what you have given us in this particular town, when we are holding our entire product at your disposal."

On November 22, 1929, Mr. Robson wrote Mr. Bell in regard to the percentage and overages charges for the Princess Theatre, Chatham:

> "We will set this just as soon as possible and advise you."

6. CANADIAN EDUCATIONAL FILMS LIMITED

This exchange distributes throughout Canada the productions of Educational Films, Inc., and of Sono-Art-Worldwide pictures. Educational pictures are substantially confined to short subjects. The producer proposes releasing 17 Sono-Art-Worldwide feature pictures during the season 1930-31.

Canadian Educational Films Limited have a commitment with Famous Players for the 1930-31 season, covering many two-reel and a number of one-reel comedies (Exhibit 98).

7. CANADIAN UNIVERSAL FILM CO. LIMITED

This exchange distributes the pictures of Universal Pictures Corporation, who propose to release 20 feature pictures in the 1930-31 season, and of Gaumont British Productions of Canada Limited, who propose releasing 20 feature pictures this season.

Illustrations of how matters stand between this distributor and Famous Players may be had from parts of the following exhibits:

Exhibit 199. May 4, 1926, Clair Hague, General Manager of Canadian Universal Film Co. Limited, writes Mr. Robson:

> "I am attaching a contract for the five subjects held out for you in the Junction zone. Would be very pleased if you would sign this contract and return to us, so that these subjects will not be sold to the opposition."

May 5, 1926, Mr. Robson replies to Mr. Hague:

> "Enclosed find contract covering five pictures for the Junction zone. Please do not consider this a precedent in signing contracts for these five pictures in this particular theatre.
>
> "My understanding of the arrangements is that all these pictures are subject to screening, and that there is to be no contract signed prior to the screening, covering these five pictures, but I assume you have some reason for wanting a contract in the Junction zone for the above mentioned five pictures, so in this instance I am signing same."

Exhibit 158. On September 9, 1927, Mr. Robson writes Mr. Hague, similar letter to those above noted sent to other exchanges forwarding a schedule of overages on 15 per cent pictures for Famous Players theatres, stating:

> "Will you kindly notify all your offices at once of the new figures that are to prevail."

January 19, 1927, Mr. Robson writes Canadian Universal Film Co. Limited, advising that the Trent Theatre has been taken over, and stating:

> "We would appreciate if, before disposing of any further film product in Trenton, you would get in touch with the writer."

On April 11, 1927, Mr. Robson writes to Canadian Universal Film Co. Limited a similar letter to that written other exchanges above mentioned, at approximately the same date, advising of the early opening of the Runnymede Theatre, and

> "... would request that you make no further division of pictures in that zone without first taking it up with our company."

and asking what product Universal have sold to the Lyndhurst Theatre in that zone.

April 12, 1927, Mr. Kaufman, Sales Manager of Canadian Universal, replies to Mr. Robson:

> "*Re* your new Theatre in Runnymede, please be advised at the present time we are reserving all our product for this house, and shall be pleased to hear from you at your convenience."

(NOTE: The Runnymede Theatre was opened June 2, 1927.)

May 5, 1927, Mr. Robson writes to Mr. Hague a similar letter to those sent other exchanges about the same period, advising of a change of the picture situation developing in the West Toronto zone:

> "...and before you dispose of any of your product whatsoever in that zone I wish you would personally take the matter up with me. This is very important."

Exhibit 176. Letter September 8, 1928, Mr. Hague to Mr. Robson:

> "Relative to Peterboro. I wish to confirm our conversation advising that it is O.K. for us to sell the 'Denny's' and 'Michigan Kid' in this City, and no other picture on the list selected unless we receive your O.K."

Exhibit 189. Letter June 13, 1929, Mr. Hague to Mr. Robson, with reference to pictures "Give and Take" and "Girl on the Barge" and a number of others:

> "It looks to me as if there is going to be no possible chance of getting these played after holding them up so long. I have therefore instructed Mr. Leduc to release both these subjects in Montreal without a first run."

A letter July 6, 1929, Mr. Robson to Mr. Hague, complaining about the Famous Players not obtaining the picture "Show Boat" for the Famous Players Saint John Theatres:

> "Now, Clair, I don't like such actions on the part of Mr. Sault. We might just as well put him right first as last on the Maritime Provinces, for I am not going to have any of these double-barreled, cross-checking arguments or misunderstandings. Mr. Sault is dealing with a corporation, not some little exhibitor."

Sault was the St. John Manager of Universal.

Exhibit 335. Letter August 21, 1928, from L. B. Metzger, General Sales Manager of Universal Film Exchanges Inc. of New York City, to Mr. Hague:

> "I am returning the Nathanson contracts for Nelson, Nanaimo, Vancouver and New Westminster. I realize that Nathanson more or less controls the situation, but we certainly have something to say about the prices that they will pay for our product......I am under the impression that Scott worked these out with Thomas, but I think you can do something with Nathanson. If you feel it is advisable, I will gladly wire him from New York."

Letter July 2, 1929, from R. A. Scott, Manager of Universal at Vancouver, to Mr. Van Praag, General Manager of Universal at New York City:

> "Regarding your recent wires pertaining to the slowness of our getaway in the selling season—I am waiting until we get straightened around with Nathanson before we make any definite move in the key towns... We cannot go out and sell against Nathanson without his consent and expect to get a reasonable split from him in situations where no opposition exists, so this matter must be handled diplomatically."

Letter September 6, 1928, Mr. Hague to Mr. Metzger:

> "I feel that pressure has been put on Spencer to buy Paramount Pictures, also Metro, due to the fact that Nathanson's representative has laid it cold on the line to them, as I feel that Spencer does not want the Nathanson Circuit invading his territory. If you secure a commitment from Spencer, by having a wire from Mr. Laemmle go to him, I will go to St. John just as soon as we get set with Nathanson."

(NOTE: The Spencer above referred to was an independent exhibitor in the Maritime territory. Some time subsequent to the formation of Radio-Keith-Orpheum (Canada) Limited in 1929, one of Spencer's theatres, "the Rialto" at St. John, was brought into the R.K.O. chain by an operating agreement, as mentioned hereinbefore in this report.)

An excerpt from a letter dated April 29, 1929, from Mr. Hague to Mr. Van Praag, Universal Executive in New York, is of interest. It refers to the acquisition of the Berry chain of Theatres in British Columbia by Famous Players, and the then proposed acquisition by Famous Players of an interest in the R.K.O. chain of theatres, which last, it will be remembered, was acquired in May, 1929:

> "The acquisition of these houses in that territory certainly changes the map as far as possibilities are concerned there in regard to independent houses, as there are very few towns in this territory. With the Dewees affiliation with Nathanson, it gives them practically everything worth while in that section. The Auditorium, Quebec, has been announced as being taken over by Nathanson. This is the best house in Quebec City. They have also invaded the St. John territory, and reports are that they have taken over the Majestic, Halifax, and are also negotiating in other towns to take over theatres or build."

(NOTE: The Famous Players Capitol Theatre at Halifax is presently erected on the site of the Majestic.)

Letter July 2, 1929, from R. A. Scott, Manager of Universal at Vancouver, to Mr. Hague, asking what policy Universal is going to adopt "regarding Dewees and Nathanson" in British Columbia:

> "...I want to get the keys set so I will know what to do with some of the smaller towns that are considered opposition by Dewees and Nathanson. I could go ahead and sell our product in Victoria; the same applies to Trail and New Westminster and a few other spots, but this would certainly be bad policy to pursue before we knew where we stood with both of the 'big shots'."

Letter August 7, 1929, from Mr. Hague to Mr. Metzger, General Manager of Universal, New York City. Mr. Hague explains the selling season getting away so slowly because:

> " Nathanson is stepping in every important situation where he was not in last year.
>
> "In fact we just received a note a couple of days ago that they were going into six more situations and I understand there are some more coming in soon.
>
> "It is unfortunate that a number of the new situations where they have stepped in have been our accounts in the past, and, as in all cases they have suggested that before closing our product they would like to first negotiate on same, that is, where there are competitive houses in the same situation. This applies to all other companies doing business with the circuit. They have been held up likewise.
>
> "At the present, nothing can be done where there are competitive situations in regard to what product they will or will not use... The whole frame-up, as it looks to me, is that nobody will do anything until he (Robson) does get back."

8. UNITED ARTISTS CORPORATION LIMITED

This exchange distributes United Artist Pictures. United Artists propose releasing 19 feature pictures during the 1930-31 season.

At the date of last taking evidence, United Artists had not sold Famous Players their 1930-31 product. Certain of the affiliations of Famous Players, such as Dewees, have however purchased current season's product of this exchange. I understand that this company expect to sell their product to Famous Players before expiration of the current season. They have invariably done so in prior seasons. From Exhibit 328, it is a fair conclusion that during the 1929-30 season Famous Players were responsible for over 50 per cent of the revenue of United Artists Corporation Limited.

Illustrations of how matters stood between Famous Players and this distributor up to the 1930-31 season may be had from part of the Exhibits following:

Exhibit 162: Letter January 19, 1927, from Mr. Robson to United Artists, similar to those sent other exchanges at the same date, requesting withholding of product in Trenton because of the acquisition of the Trent Theatre by Famous Players.

Letter February 18, 1927, Mr. Robson to J. Berman of United Artists, Toronto:

> " You had better arrange not to sell ' One Night of Love ' anywhere without first taking it up with Mr. Nathanson. This is just a suggestion."

Mr. Berman's reply, February 19, 1927:

> " In answer to your letter of February 18, I can assure you that ' The Night of Love ' will certainly not be booked anywhere without first taking it up with you and Mr. Nathanson."

Letter July 5, 1927, from H. M. Masters, General Manager of United Artists, to Mr. Robson, with references to Famous Players Theatres in London, Welland and Brantford:

> " I beg to advise that we are not disposing of any of our 1927-28 pictures in these towns until we have taken the matter up with you."

Exhibit 329: Letter November 13, 1928, from Mr. Masters to Mr. N. L. Nathanson, complaining about Mr. Bloom of B. & F. Theatres Limited, in *re* the matter of Greenwood and Melba Theatres, Toronto, and stating he had written Bloom:

> " calling his attention to the fact that it was rough enough selling pictures without having him step out of his place to cut our film rentals in an independent theatre. I understand from fairly reliable sources that Sam Bloom told this exhibitor, Starkmin, that he could buy our pictures for him at considerably less than Starkmin could buy them himself."
>
> " You know what harm Sam Bloom has done up to date with that uncontrollable tongue of his, which always seems to speak out of turn."

He continues that he does not wish to bother Mr. Nathanson:

> " but I really have our mutual relations at heart."

9. Columbia Pictures of Canada Limited

This exchange distributes the pictures of Columbia Pictures Corporation, who propose releasing 20 feature pictures during the 1930-31 season.

Reference to the right of Famous Players to a first choice of Columbia Pictures has been made at page 28 of this report, and at pages 27 and 28 the close connection of the shareholders of this distributing company with Famous Players' executives and affiliations is set forth.

The following excerpts from letters in Exhibit 181 are of interest:

September 4, 1929, letter from Mr. L. Rosenfeld, General Manager of Columbia Pictures of Canada Limited, to Mr. Robson, with reference to Columbia pictures to be supplied to the Belle and Regent Theatres at Belleville, which, it will be remembered, were acquired by Famous Players on July 26, 1929, in which Mr. Rosenfeld states:

> " For the Regent Theatre there will be 14 unplayed pictures totalling $280. Please be good enough to let us have an expression of your attitude in this matter."

Letter November 18, 1929, from Joe Brandt, President of Columbia Pictures Corporation, New York City, to Mr. Rosenfeld:

> " It has been reported to me that you are supplying several of the theatres in Canada with our short subjects without any supporting contracts. This, I imagine, applies particularly to Famous Players and affiliated theatres.
>
> " Knowing the circumstances and their method of booking, we are not going to instruct you to enter into contracts with them.
>
> " At the same time, however, we do insist that you effect some definite arrangement with them. . . . We have effected similar arrangements with the big circuits in this country, namely: Publix, Fox and Loew; also Warner-First National and United Artist theatres."

Letter November 30, 1929, Mr. Robson to Mr. Rosenfeld:

> " I wish to advise you that our company does not sign any short subject contracts."

10. Tiffany Productions of Canada Limited

This exchange distributes the productions of Tiffany Productions Inc., who propose releasing 48 pictures during the 1930-31 season. The physical distribution of the films in Canada is effected by Universal Exchange, above mentioned.

Tiffany pictures are perhaps not as popular box office attractions for downtown first run theatres in the larger centres as those of most of the other exchanges.

VI. PROTECTION

1. Reasons Advanced For and Against Protection

It is stated in evidence by Mr. Arthur Cohen, and by practically every representative of a distributor who was called to give evidence, that protection is a necessity in the motion picture business, that from almost the beginning the principle has been recognized by producers and distributors, and by the exhibitors as well. Certain independent theatre owners, who were called as witnesses, are also agreed that a certain amount of protection is desirable. Mrs. Joshua Smith and certain other independent exhibitors, on the other hand, contend that protection is not a necessity in the successful carrying on of the industry.

The reasons advanced in favour of protection are that the largest part of the revenue derived in Canada by the distributors, and through them by the producers, variously estimated from something over 50 to as high as 72 per cent, is obtained from the downtown first runs in the key centres in the Canadian territory, and that these houses charge a higher admission price than the subsequent run houses, and that unless this large revenue were obtained, the quality of the pictures would deteriorate, because the producers would not be able to expend the large sums of money which are now spent on the production of the highest class of moving pictures.

A further reason advanced is stated to be that the first run downtown theatres could not themselves survive were it not for protection, and that consequently the public who are willing to pay the higher admission prices in these theatres are able to see better pictures in better surroundings.

I am not at all convinced that protection is a necessity, as the arguments advanced in its favour do not wholly impress me. If the doing away with protection had the result of decreasing some of the enormous sums of money paid to artists engaged in the production of pictures, and if their scale of living were thereby reduced to that of the ordinary citizen engaged in professional pursuits, it might not be altogether a bad thing for the industry, and, although the place of production of practically all of our pictures is not in Canada, still Canada by means of this protection is made to contribute its share to the very extravagant salaries paid these artists.

Protection not only prevails in favour of the first run downtown houses in the larger centres, but also in the centres that are for purposes of distribution divided into zones. The first run houses in those zones have protection against the subsequent run houses, and in those zones fairly generally Famous Players subsequent run houses have protection over independent subsequent run theatres in the same zone. In addition to this, protection is also required to be given to Famous Players houses in one locality against independent theatres in other localities, for example, Ottawa against Hull, Carleton Place, Almonte and Arnprior, the latter place which is over 35 miles from Ottawa; and in many instances protection is required for Famous Players houses as against all other houses within a certain radius, sometimes 25 miles, sometimes 60 miles.

Involved in this question of protection is the further question as to what theatres are in competition with other theatres and as to whether Famous Players has not required and obtained for its houses protection against other houses, not only for the purpose of protecting its house, but really for the purpose of making things difficult for the opposition houses. I think it has.

An example of this is the protection given to the Palace Theatre on Danforth Avenue in Toronto, as against the Carlton Theatre, an independently operated house on Parliament Street. These two houses appear to draw from quite separate parts of the city, as there is no direct line of travel between the two theatres, the Carlton being cut off from the Palace by the Don Valley and there being no street car line on Parliament Street leading to the Bloor Street viaduct, which is the means of travel over this valley between the two localities.

There is also involved the question as to whether under any circumstances protection can be claimed to be reasonably necessary as between two individual theatres, for example as between the Carlton Theatre on Parliament Street in Toronto, the one just above mentioned, and its Famous Players competitor, the Parliament, which is on the same street and within a few blocks of the other theatre. It if is contended that protection is necessary in all cases, then the Parliament should have protection against the Carlton, and the Carlton against the Parliament. I find, however, that the situation is that the Parliament has protection over the Carlton and all other theatres in the district, that the Parliament charges a lower admission fee than the Carlton, that it has a better choice of pictures and that it pays less for its pictures than the Carlton. Notwithstanding all this, and the fact that the Carlton has no protection as against the Parliament or any other theatre in this zone, it is able to carry on its business fairly profitably. Mr. J. J. McCabe is the owner of this theatre and his evidence appears on page 4679 *et seq.*

Mr. N. A. Taylor, who was a witness and is Secretary-Treasurer of the Exhibitors Co-Operative of Canada, Limited, an organization which is endeavouring to do some co-operative buying for its exhibitor members, states (Evidence, pp. 5104-6) that, being in a position to pay more for a picture, the theatre may have the right to a prior run, but not to protection (page 5109). It is also stated in evidence and argued, that prior run and period of protection is an advantage to the subsequent run house, inasmuch as the first run theatre spends a considerable amount in advertising and in exploitation of the picture which brings it, through newspapers, bill-boards and other advertising media, to the attention of the theatre-going public, and of which the subsequent run houses reap the benefit. It is even stated by some of the distributor witnesses that it is difficult to sell to exhibitors in the smaller towns pictures that have not had a first run in the key centres. I am inclined to accept this view, but to a somewhat limited extent.

Still, I am not prepared to find, on the evidence which I have heard, that a certain amount of protection may not be of some advantage to the industry, provided that it is not used as a weapon to delay the subsequent runs to such an extent that the subsequent run houses are unduly hampered in their business, and that their patrons, who are not in a position to see the first runs at the downtown houses, are unable to see the pictures until after their novelty has disappeared.

It perhaps might also be remarked that in my personal experience, most of the moving pictures shown could never become classics, and are to a large extent like popular music, dependent almost entirely for their appeal to the public upon their novelty and freshness.

Protection also is capable of being used by an organization having the buying power of Famous Players, so as to lessen the competition of the independent exhibitors against its houses, and to make it difficult for the independents to obtain pictures within a reasonable time after their release, and this is particularly so in view of the relationship between Famous Players and most of the major distributors in Canada.

It becomes therefore necessary to examine the evidence and correspondence, with a view to ascertaining whether Famous Players have so used their power to obtain protection, and if any of the others named in the Order in Council have concurred in their so doing.

2. PROTECTION DEMANDED BY FAMOUS PLAYERS

Though it has been stated that protection was incidental to the business practically from the beginning, the first record I was able to find in the Famous Players office of any definite requirement of theirs as to a comprehensive policy of protection is contained in Exhibit 61, which is a letter from Mr. N. L. Nathanson, Managing Director, to Mr. O'Loghlin of Fox Film Corporation Limited, dated October 12, 1927. Previously to this there had been protection, but it seemed to have been arranged more by acquiescence than by any definite agreement, and applied to individual situations. This letter is as follows:

> "I am attaching hereto a list of theatres and zones in which we require protection, and I have set up in detail the subsequent runs which cut into our first run business in that zone.
>
> "You will oblige me in future by seeing that your bookers comply with this request and thereby eliminate the numerous complaints that are continually coming before me of pictures running in our zone too soon after their first run."

The list attached refers to the principal theatres in the larger towns and cities in Ontario, and including Toronto and all of the Famous Players houses outside of Toronto, and the requirement for all houses outside of Toronto, as against the competitors, is for sixty days, with the exception of the Savoy in Hamilton, where the period is thirty days over other suburban theatres. The Savoy was probably then a second run house, as it is now closed.

Not only is protection required in favour of first run theatres in a city or town, but, for instance, the Temple Theatre, Brantford, gets 60 days against theatres in Paris and Simcoe; Griffin's, Chatham, 60 days against Wallaceburg, Tilbury and Blenheim theatres; the Regent of Galt, 60 days against Preston theatre; the Capitol, Hamilton, 60 days against all Hamilton theatres and the Dundas Theatre; the Strand in Hamilton, 60 days against other run Hamilton and subsequents runs in the Delta, Kenilworth and the Main Playhouse; Pantages Theatre, Hamilton, the same protection as the Capitol; the Capitol, Kingston, 60 days against Gananoque and Napanee; the Capitol, Kitchener, 60 days against Preston and Elmira; the Capitol, London, 60 days against St. Thomas and Ingersoll; the Regent, Ottawa, 60 days against Hull and Ottawa subsequent runs; the Regent, Oshawa, 60 days against Whitby and Bownmanville; the Classic, Owen Sound, against Meaford and Wiarton; the Capitol, St. Catharines, against Thorold and Merriton; and Griffin's, St. Catharines, the same protection; the Capitol, Welland, 60 days against Port Colborne, and the Griffin, Woodstock, 60 days against Ingersoll.

In Toronto, the Hippodrome, Uptown, Tivoli and Pantages, 60 days against all subsequent runs in Toronto and suburbs; the Palace, 60 days against twelve named theatres in its neighbourhood and 30 days against the B & F houses in the same neighbourhood; the Oakwood, 60 days against the Major, Royal George, New Major, Weston, Mr. Dennis, Royce and Queen's Royal, all then competitor houses, and 30 days against the Christie, a theatre situate nearer the Oakwood than any of the above named, and a Bloom & Fine house, then a subsidiary of Famous Players. The St. Clair Theatre requires the same protection as the Oakwood, and the same remarks apply. The Alhambra 60 days against the College, the Playhouse, the Garden, Vermont, Hillcrest, Kenwood, Kitchener and Doric, all independent houses, and 15 days against the York, a B & F house; the Bloor, a Famous Players house, the same protection as the Alhambra; the Capitol 60 days against the Hudson and the Queen's Royal; the Teck and the La Plaza, 60 days against the Broadview, Melba, Crown, Paulton, Rialto, Rex, Woodbine, Palace and LaReta, all then independent houses; the Teck and LaPlaza being, according to Exhibit 6, fourth run houses; the Runnymede, 60 days against ten named independent theatres, including those in New Toronto, Mimico and Long Branch, which are not at all in direct communication owing to their location, High Park intervening, and including the Crystal Theatre, then operated by the witness Freedman, and afterwards acquired by Famous Players, whereas the period against the Beaver and Mavety, Famous Players houses in the same neighbourhood, is 30 days, the Beaver and Mavety being much closer to the Runnymede than any of the theatres named, except the Crystal and the Lyndhurst. In turn the Beaver and Mavety require 60 days against the Crystal and Lyndhurst and eight other named theatres, some of them at a considerable distance.

Thus, a picture which played downtown in Toronto would have 60 days against the Runnymede, which is first run in the zone, and the Runnymede in turn 30 days' protection against the Beaver and Mavety, which two latter theatres have 60 days' protection against their immediate neighbour, the Crystal, so that a picture played at the Runnymede could not play the Crystal till 150 days after its first showing in Toronto. This is quite in line with the second paragraph of the memo (part of Exhibit 344) mentioned on page 76 of this report, where it says:

> "I would recommend three changes a week if pictures can be bought right in the Mavety Theatre. By that move we would absorb 448 pictures between the Beaver and Mavety, making it impossible for any of the opposition houses to follow us."

To avoid any possible misunderstanding, it is of course clear that the Runnymede could not play all of the pictures that were available, and these remarks apply to a picture which the Crystal might want to play, which already had a first run downtown and which was going to the Runnymede.

Mr. O'Loghlin promptly replied to Mr. Nathanson's letter about protection, his reply being part of the same exhibit of October 13, 1927, as follows:

> "I have your letter of the 12th inst. attaching a list of theatres and zones in which you require protection. I have handed same over to our booker with instructions to co-operate with you in this regard."

Apparently there was, judging from the language of Mr. Nathanson's letter, a peremptory demand and prompt and ready acquiescence on the part of the distributor.

Exhibit 62 is a letter dated May 27, 1929, from Mr. N. L. Nathanson, Managing Director of Famous Players, to Mr. H. L. Nathanson of Regal Films Limited, in which he says:

> "With the advent of sound equipment in a lot of the smaller suburban and downtown theatres who are repeating the pictures in various subsequent runs after our showing downtown, it is becoming a matter of great importance and concern to this company, and we also believe a matter that will affect you vitally, due to the fact that, as your productions play on percentage in our theatres, your revenue will be largely affected unless adequate protection is given to those theatres showing first runs and whose admission prices are much higher, in many cases double or even more, than the smaller theatres that are repeating and playing after these theatres.
>
> "I am attaching a schedule of the protection periods which we will require on every production purchased from you from this time on, which is also to affect

> pictures already contracted for, unless it interferes with previous contracts made with such theatres as play second runs or runs subsequent to the downtown showing.
>
> "For your information a copy of this letter and conditions is going forward to each of the companies who are releasing their productions in Canada and we are advising them that the attached schedule of protection is to form a part of every contract made with them in the future."

The language of this document is somewhat remarkable, in view of the relationship between Famous Players and Regal Films Limited, as indicated elsewhere in this report.

On June 4, 1929 (part of Exhibit 62) Mr. H. L. Nathanson, General Manager of Sales of Regal Films Limited, writes to Mr. O'Connor, the local branch manager at Toronto, as follows:

> "I am herewith attaching copy of letter received from Mr. Nathanson, and also schedule of protection periods required by the Famous Players Canadian Corporation on all of the sound pictures released by our company.
>
> "It will be necessary for you to adhere to the protection periods herein listed, unless otherwise advised."

The list is dated May 27, 1929, and is headed: "Protection required on Sound Pictures," and pertains to the principal Ontario towns. The periods are very largely increased over those mentioned in Exhibit 61, being in most instances 90 days instead of 60 days, including not only the city or town, but in nearly every instance, the territory within a radius of 25 miles of the city or town. For instance, in Hamilton, the first run theatres are to have 90 days protection against second run city of Hamilton and theatres within a 25 mile radius of the city. The Strand, Hamilton, to play exclusive second run 60 days after first run and receive 60 days protection against subsequent suburban bookings. Kingston, exclusive in Kingston and 90 days protection within radius of 40 miles. Ottawa, 90 days against subsequent bookings, both Ottawa and Hull, and also a radius of 25 miles form the city. In many of the towns the run is to be exclusive for the Famous Players house in the individual town or city.

In Toronto, for the Tivoli and Uptown, the period is 90 days against subsequent runs in Toronto and against all theatres within radius of 60 miles; in other words, Hamilton, which is about 40 miles distant, could not play a picture that had played in either of these theatres in Toronto until 90 days after the first run here. The period for Pantages and Hippodrome is 60 days against subsequent runs, and 90 days against theatres within a radius of 25 miles. The Bloor is to have an exclusive second run, and it and the Alhambra 60 days against all subsequent runs within a considerable area of the city, defined in the document. The Capitol to have 30 days against the Belsize and Bedford, Famous Players houses, and 60 days against the Hudson and Queen's Royal, the opposition houses. The Bedford and Belsize, fifth run houses, are to have 30 days protection against the Hudson and Queen's Royal.

Exhibit 40 is a protection schedule, part of which is included in Exhibit 62, so far as it pertains to the Toronto and other Ontario houses. It, however, also contains a protection schedule for other locations in Canada. The Capitol and Palace in Montreal, the period of protection is 90 days against all subsequent runs in Montreal and within a radius of 60 miles of the city, except the United Amusement chain theatres, which shall be on 60 days' protection. Loew's, Montreal, the period is 60 days against all subsequent runs in Montreal and within a radius of 60 miles of the city and 30 days' protection against the United Amusement chain of theatres. (Note: The United Amusement were part of Famous Players' chain.) The Auditorium, Quebec, 90 days' protection against subsequent runs within a radius of 50 miles of Quebec city; Saint John, N.B., 90 days within a radius of 25 miles; Halifax and Sydney the same. Winnipeg, "60 days' protection on Famous Players' houses" and 90 days' protection on opposition houses; Regina, the same; Moose Jaw, 90 days' protection; Calgary, the same as Winnipeg; Edmonton, 90 days' protection; Vancouver, the same as Winnipeg, and New Westminster and Victoria, each 90 days' protection.

Exhibit 39 is a schedule of protection, dated May 20, 1930, which is the schedule which Famous Players endeavoured to work to last year (Evidence, p. 617). Mr. Cohen states that this was not completely lived up to and was in force from May 20 to September 1 of that year. In it the periods of protection are reduced from 90 to 60 days in most of the Ontario cities and towns, and in Toronto to 45 and 30 days; in Montreal to 70 days and 60 days for the Capitol and Palace, and 45 days for Loew's and Imperial; 45 days for the Quebec Auditorium, and 60 days in St. John, Halifax and Sydney. In Winnipeg, Regina, Calgary, Vancouver, New Westminster and Victoria, 60 days, and Moose Jaw and Edmonton 45 days. The principles, otherwise, are practically the same as in Exhibit 62.

After the delivery of Exhibit 39, negotiations were apparently entered into between Mr. Cohen of Famous Players and the general managers of the exchanges, with a view to adopting a protection schedule for the season 1930-31, and a committee of distributors was appointed composed of Mr. H. L. Nathanson of Regal Films, Mr. Percy Taylor of R-K-O, and Mr. Clair Hague of Universal, who apparently worked in conjunction with the Cooper organization. Note the community of interest of Famous Players with the two former exchanges as set forth on pages 109 and 114, *supra*.

On June 30, Mr. H. M. Thomas, Western Division Manager of Famous Players, wrote to Mr. H. Sedgwick enclosing proposed schedule for the Western Division. His letter is quoted on pages 625 and 626 of the evidence, and in part is as follows:

> "I call your particular attention to the following situations:
>
> "*Edmonton:* Special care should be taken at the Rialto, as they are getting too many good pictures. This is quite a nice house and we need all the pictures we can get for the Capitol and Empress. (This is the theatre above referred to as operated by Mr. Long.)
>
> "*Saskatoon:* Mr. Morton has just purchased the Victoria Theatre, and we do not want him to get too many good pictures.
>
> "*Vancouver:* Guest of Hamilton is building a new suburban house. Particular pains should be taken to see that this house follows all the Langer Circuit.
>
> "*Winnipeg:* The Main Street houses charge 25 cents, so our suburban houses have to play ahead. Care should be taken to see that the suburban houses get protection against the Miles Circuit, whose theatres I have listed."

A schedule enclosed with the above letter is Exhibit 44 and sets out periods of protection of 90 and 60 days in the various situations.

In *Vancouver*, for the Capitol, Orpheum and the Dominion theatres, the schedule says:

> "Sixty days from closing dates as against subsequent runs in Vancouver (our own houses) and 90 days' protection against other houses . . . except Columbia, which is our own house, and which can follow Vancouver, but should never be ahead of it.

> "Dominion to have the privilege of playing second run if desired sixty days after first run, and to have protection against subsequent showings of any second-run pictures it plays.
>
> "New house Guest is building should be treated as opposition to these houses and no picture that plays these houses should be booked into Guest house until after all runs completed. THIS IS VERY IMPORTANT. Exception should also be taken to Maple Leaf playing double bills. Olympic is opposition to Grandview and Regent and should not be booked until 60 days after these houses.
>
> "*Chilliwack*—Strand Theatre—'60 days' protection against any town having talking picture theatres within radius of fifty miles.' Population of Chilliwack (per Exhibit 350) is 1,762.
>
> "*Rossland*—'has 60 days' protection against Trail.'
>
> "*Calgary*—Capitol and Palace Theatres—'60 to 90 days' protection against our own Strand (second run). Strand 60 days' protection against Banff and Cochrane.'
>
> "*Edmonton*—Capitol and Empress—'60 to 90 days' protection against our suburban houses. *Care should be taken that Rialto does not get any good pictures.*'
>
> "*Edmonton*—Dreamland, Princess and Monarch Theatres, Edmonton: 'Should get 60 days' protection against any other house. Do not think there are any others, but put this in to be sure.'
>
> "*Regina*—Capitol and Metropolitan: '90 days' protection against any second run in Regina except our own houses.'
>
> "*Regina*—Grand: 'Should get 60 days' protection against next run.'
>
> "*Moose Jaw*—Capitol: '60 days' protection against any city within radius of fifty miles, showing talking pictures, except our own houses.'
>
> "*Shaunavon*—Plaza: 'Same as Moose Jaw.'
>
> "*Weyburn*—Hi-Art: 'Same as Moose Jaw.'
>
> "*Winnipeg*—'First Runs 60 days against our own houses, 90 days against any other.'
>
> "*Selkirk and Transcona* not to play ahead of Winnipeg.
>
> "*Brandon*—Strand—'No opposition; should have fifty mile protection, however.'
>
> "*Fort William*—Orpheum—'No opposition.'
>
> "*Port Arthur*—Colonial—'No opposition'."

On July 28 a letter, part of Exhibit 44, was written by Mr. Muir, the District Manager at Vancouver for Famous Players, to Mr. B. Geldsaler, Chief Booker of Famous Players, complaining of considerable trouble with the exchanges, especially Warner Bros., selling pictures to the Rex and Beacon theatres (in Vancouver) before they played New Westminster:

> "I certainly feel that the pictures we have contracted for should not play these theatres until after they played New Westminster. . . .The great trouble is that we are charging anywhere from fifteen to twenty cents more in Westminster than they are on Hastings St., Vancouver."

At about the same time the Eastern Protection Schedule was prepared here in Toronto, dated July 1, 1930, Exhibit 59, in which there is claimed for the principal first run theatres in Ontario protection of 90 days in most instances, and in Ottawa 120 days against subsequent bookings, in both Ottawa and Hull and also against Aylmer, Almonte and Carleton Place. Carleton Place is thirty-five miles west of Ottawa and Almonte nine miles west of Carleton Place.

This schedule deals with Ontario, Toronto (separately), Quebec and the Martime Provinces. In it the *Capitol* and *Palace* theatres, Montreal, the St. John, N.B., theatre and the Halifax, N.S., house, each has 120 days against subsequent runs.

Exhibit 54, August 19, 1930, was then prepared. This is the Protection Schedule for Famous Players Western Division, which had been prepared by Mr. Sedgwick of Famous Players, from the original supplied by Mr. Thomas, eliminating most of the remarks which have been quoted above, the figures, however, being substantially the same.

On August 30, 1930, Mr. Cohen wrote a letter (Exhibit 53) to Mr. S. Taub, Worldwide Pictures, and to Mr. Sam Katz and Mr. J. Balaban, Paramount Executives in New York, also to Mr. J. J. Fitzgibbon, chief field executive for all Canada of Famous Players, Toronto, Mr. C. Robson, Mr. H. Sedgwick, Mr. B. Geldsaler and Mr. Legassicke, enclosing copies of the protection schedule dated August 19, 1930, covering Famous Players' theatres in Eastern Canada. This protection schedule gives, in the cities and towns outside of Toronto, for the first run houses, 60 days' protection in the town and surrounding towns and villages named in each case. For example, in Belleville the notation is:

> "Exclusive in Belleville and 60 days after closing dates against Deseronto, Napanee and Opera House, Trenton."

It is to be noted that this is 30 days less than the eastern schedule prepared on July 1 (Exhibit 59). In Halifax, however, the period is ninety days as against 120 days in Exhibit 59. In Toronto the protection asked for is substantially the same as Exhibit 59, and in Montreal it is reduced from 120 days to 90 days.

Previous to September 4, there was or were evidently some conference or conferences between Mr. Cohen and the distributors' representatives, for on that date Mr. Cohen wrote a memorandum for Mr. H. Sedgwick re protection (Exhibit 51), in which he says that he understands from Mr. Geldsaler that the western schedule is to stand "as previously indicated by Mr. Thomas", and Mr. Geldsaler is instructed to have several copies of this prepared to send to the various exchanges.

The memorandum continues:

> "I understand that the exchanges are not satisfied with our Eastern protection schedule, and desire to have another meeting with us as soon as the Western schedule is in their hands."

A meeting had taken place and the schedule had been, previously to September 13, sent to the various exchanges. (Exhibit 48.)

Previously to September 20, Exhibit 47 had been prepared and is called "ZONING AND CLEARANCE SCHEDULE IN CANADA—GENERAL PRINCIPLES." The schedule consists of a statement of localities, names of the theatres, prices of admission and the number of days clearance in each case. There is, however, this statement:

> "1. First run theatres in all cities shall have at least 28 days clearance."

and there is an attempt to define the expression, General Admission Prices. From the evidence, I take it that Mr. Sedgwick had prepared this for his own use or had been working on it as it had been considerably marked and certain items had been marked "O.K."

A meeting took place, Mr. Cohen says, between himself and the General Managers of the exchanges on September 22, and apparently in the meantime the Cooper Organization had been taking part in the consideration of these schedules. On September 23, Mr. Cohen wrote to Mr. Clair Hague of Universal, enclosing schedule of clearance "for our theatres in accordance with the understanding arrived at, at the meeting held in our office yesterday." A similar letter was sent to all exchange managers, and to various officers of Famous Players and to Colonel John A. Cooper. (See Exhibit 49). The document enclosed is called: "Clearance Schedule for Famous Players Canadian Corporation Theatres—General Principles." These general principles are largely in accord with Exhibit 47 above referred to, with some amplification and additions, one of which is Clause 7: "Breach of clearance terms by the distributor shall entitle us to damages to be ascertained by the Board of Arbitration."

The Montreal clearance was apparently settled, but in respect to the balance of the theatres under consideration the names of the theatres and the admission prices are written in, but there are no clearance periods mentioned, these apparently having been left over for consideration, or at least no definite conclusion having been reached as to them.

On September 27, Mr. Cohen wrote to all exchanges and the same officers of Famous Players, and to Col. Cooper, enclosing an amended statement of general admission prices in the Famous Players' theatres.

On October 13, Mr. Cohen sent to all exchanges (Evidence, p. 624) Exhibit 43 in regard to a working arrangement for protection in Montreal "until the proper clearance is definitely agreed upon for the Island of Montreal".

On October 17, a committee of distributors composed of Mr. H. L. Nathanson, Regal Films; Mr. P. C. Taylor, R-K-O; and Mr. Clair Hague, of Universal, sent a memorandum to General Managers, Exhibit 45, in which they say:

> "Your Committee that was entrusted with working out details of protection and clearance with Mr. Cohen of the Famous Players Canadian Corporation has arrived at a temporary understanding with Mr. Cohen and we attach a copy of the details. . . . Your Committee also desires to go on record as saying that it is understood that the same treatment shall be given to all other theatre owners in Canada, if they ask for it and if the circumstances are such as to give them the same title to it as the theatres of the Famous Players Canadian Corporation. It is suggested that where any General Manager of a distributing organization desires to see an important change made in this zoning and clearance arrangement, that he should send a written request to the secretary of the Canadian Film Boards, suggesting any change which in his judgment seems advisable. The proprietor of any theatre shall have the same privilege, and this of course, includes the officials of the Famous Players Canadian Corporation. Such changes will be considered by a Committee."

The schedule attached contains a list of the theatres, the towns and cities, and reference to the number of days clearance, in most instances as against neighbouring towns. In Hamilton there is from 28 to 56 days' clearance over second runs according to admission prices charged, ranging from 45 cents to less than 30 cents, and the second run theatres have from 14 to 42 days over subsequent run theatres according to admission prices, these being from 30 cents to 20 cents or less. The clearance dates in Halifax, London, Niagara Falls, Ottawa, Quebec, St. Catharines, Saint John, N.B., Windsor and Toronto are worked out on this principle.

This document came into Mr. Cohen's hands, apparently not having been sent to him, and on Ocober 28 he wrote to Colonel Cooper saying that he had seen this memorandum to General Managers "purporting to contain a temporary understanding arrived at with him in regard to protection for our houses. Permit me to say that no meeting or understanding with any of the exchange managers has been held or arrived at since September 22, when we drew up a tentative arrangement of general principles which we assumed to be acceptable to the exchanges and ourselves. The protection stated in the memorandum of October 17 is entirely at variance with these principles and cannot possibly be satisfactory to us in nearly every case."

On November 20, Mr. Cohen had prepared, and submitted, a schedule of protection, Exhibit 38, in which the periods in most Ontario towns are six months and as against adjoining towns from 28 to 56 days. In Halifax the period is 49 days against the Garrick and 77 days against any other theatre in Halifax and Dartmouth. In London the period is six months for the first run over the downtown theatres and 28 days against the Palace, 70 days against the Rex, 56 days against St. Thomas, Ingersoll, St. Mary's and Strathroy. In Montreal, the Palace and Capitol have 84 days on all second run theatres showing double bills; 35 days clearance on second run theatres showing single bills, and charge admission of 40 cents or more. In Ottawa the period for the Keith and Imperial is six months downtown; 70 days against the Francais, Rexy and Columbia, and 42 days against the certain named theatres and Hull and Aylmer and Gatineau; 84 days against certain other named Ottawa theatres and the Eden Theatre, Hull, and 28 days against Almonte, Carleton Place and Arnprior. Toronto is divided into nine zones and in each zone the Famous Players' house is given the first run in the zone, and periods of clearance against opposition theatres and very much shorter periods against subsequent run Famous Players' houses. For instance in Zone 1, the Bloor and Alhambra have 77 days against the Bathurst, the Peter Pan, the Reo and the Orpheum and only 28 days against the York, which is a B & F theatre. True, the period against the Madison, which is a direct opposition of the Bloor and Alhambra, is 14 days, but it is obvious that no period of protection is required in respect to the Madison, because that theatre will not play a picture that has previously run in the Bloor or Alhambra.

This document, if Famous Players is able to insist upon its terms, will increase the periods of protection very largely over anything that has obtained heretofore.

3. Opinions of Colonel Cooper and Others

It is interesting to note what Colonel Cooper says about protection, on pages 4000 and 4001 of the evidence.

It is important enough to quote, and is as follows:

> "Q. And is it correct to say that the exhibitors were demanding protection and that the distributors, as indicated by this minute that I have just read, were resisting any increase in the protection periods?
>
> "A. Correct, sir.
>
> "Q. I see. So that it was something really that was being done—or being urged by the exhibitors and being somewhat opposed by the distributors?
>
> "A. Yes sir, that is my understanding.
>
> "Q. And—I am speaking generally now—over a period of years that was the situation, was it?
>
> "A. I think I would describe it this way, sir: as the larger theatres grew in number and importance in the community they were constantly striving to—had been constantly striving to get more protection....
>
> "Q. From the distributor?
>
> "A. From the distributor than was common in the previous—in the earlier days.
>
> "Q. And it was, as indicated, a very considerable struggle?
>
> "A. It was indeed sir.
>
> "Q. You spoke about the larger theatres. I presume you mean first-run theatres, like the Tivoli and Loew's and the Uptown—not now the Uptown, but the Uptown formerly—and the Imperial and theatres of that kind, as distinguished from theatres which you described yesterday as neighbourhood theatres?
>
> "A. That is correct, sir.
>
> "Q. And that this extended protection for periods such as sixty days and ninety days and so on is really something which after a considerable struggle the exhibitors have been able to obtain from the distributors.
>
> "Mr. Symmes: In certain cases.
>
> "The Witness: In a general way that is correct. I didn't know that any of them had got as much protection as ninety days.
>
> "The Commissioner: Oh, yes—well at least, they have asked for it.
>
> "Mr. Heighington: They have asked for 120 days. I don't know whether they got it or not.
>
> "By the Commissioner:
>
> "Q. The point is that it was not something that the distributors were trying—
>
> "A. To force.
>
> "Q. —to impose on the exhibitors?
>
> "A. Correct sir, that is a very fair statement."

It is to my mind fairly clear that the protection idea is something which in fact has grown out of the combining in large companies of the three branches of the motion picture industry, viz: producer, distributor and exhibitor, such as Paramount Publix, a producer, controlling Regal Films and Famous Lasky Film Service Ltd., distributors, and Famous Players, very large exhibitors.

If there were real competition, in the sense that the independent theatre owners were on nearly equal terms with Famous Players when bargaining for pictures, it is difficult to see how the protection idea as at present in vogue could prevail. It seems to me clear that, so long as there is protection, and more particularly if there are unreasonable periods of protection, and still more particularly if one organization controls the great majority of the houses enjoying this protection, somebody is bound to be hurt by it.

It is quite evident from the evidence and from the exhibits above referred to that the only party in Canada who has so far made an attempt to have any understanding with the distributors generally, as to protection, has been Famous Players, and the reason for this is quite obvious. Because if they can succeed as they have succeeded in obtaining for their theatres the first run in the key centres, and in the larger towns exclusive runs and in addition first runs in the zones in the larger cities of Toronto and Montreal, they enjoy an advantage which makes it very difficult indeed for the independent theatre to compete, and one wonders whether the remark of Mr. N. L. Nathanson to Mr. Wainwright, quoted on page 78 of this report, " I told the boys themselves, ' Let the boy go along, he is earning a living but he is not getting rich ' ", is not the underlying idea of this whole idea of protection as it prevails in Canada.

Considerable evidence was taken on the question of reasonable protection, and after considering the evidence of the various witnesses I am most impressed with the evidence of Mr. P. C. Taylor, where he says, on page 7176:

> "Unless there is a tremendous difference in the classification of the house and admission prices, I do not think that protection is necessary beyond the point where the house which runs after cannot advertise during the run of the preceding house, say one week. Sometimes there are other things which enter into it such as a quite appreciably lower admission scale, and a different calibre of clientele, but ordinarily that is my idea—that seven days is plenty."

This refers to the protection to be given to the first run in the zone. When speaking of downtown first run, he says, on page 7175: "I had always had the idea that about twenty-eight days was enough protection for anybody." In other words, he puts it that 28 days clearance for the first run downtown house and 7 days for the first run house in the zone is sufficient, in both cases this being the maximum.

After consideration of all the evidence I would, without determining whether protection is necessary at all, accept Mr. Taylor's statement that these periods of 28 days and 7 days are reasonable, in this sense, that they offer all the protection that can reasonably be asked for, in order that the first run house should have whatever advantage there may be from its own advertising, and as an offset to whatever advantage the second run may derive from the prominence given to a picture by reason of its having been run in one of the larger first run downtown houses.

Mr. Haskell Masters and Mr. Clair Hague, who were the only other managers of Canadian distributing companies called to give evidence, did not express any opinion as to the period of protection contrary to that expressed by Mr. P. C. Taylor.

In this connection it is interesting to note a letter, part of Exhibit 188, dated November 1, 1929, in which Mr. Robson wrote to all exchanges, in which he says:

> " In regard to protection at the Beach Theatre, we feel that as the Teck, Prince of Wales and Grover are not in the same Zone as the Beach Theatre, the said three B & F houses should have the privilege of playing pictures immediately after the Beach, providing they do not advertise the pictures in those houses during the run at the Beach."

This illustrates the attitude of Famous Players when the protection is in favour of their theatres, in this case the Beach as against theatres owned or operated by an affiliated company, in this case B. & F. Theatres Ltd.

4. CONCURRENCE OF EXCHANGES IN DEMANDS OF FAMOUS PLAYERS

Exhibit 188 is a file of correspondence with the various exchanges on the question of protection, and contains many letters illustrative of the fact that the exchanges have been quite compliant to the demands, from time to time, of Famous Players, and that the periods of protection granted to their theatres have not been according to the standard of reasonable protection, which I have accepted from the opinion expressed by Mr. P. C. Taylor, and very much in excess of that standard. Mr. Taylor himself, on behalf of the exchange which he manages, has granted Famous Players protection beyond what he considers reasonable.

On February 22, 1928, Mr. Robson wrote to Mr. Clair Hague, Universal Films, and all other exchanges, including Columbia, Famous Lasky, F. O. B. (now R.K.O.), Fox Films, Regal Films, United Artists, Warner Bros., and First National, in part as follows:

> " We would ask that you advise your bookers that we have rearranged the protection on feature pictures in certain of our theatres in Toronto before they play the B. & F. Theatres. The arrangements that we have made with Messrs. Bloom and Fine are as follows:
>
> " Four full weeks' protection on all pictures playing the Runnymede before they play the Beaver or Mavety."

Three weeks for the Bloor; two weeks for the Alhambra before they play the York; two weeks for the Palace over the Grover and Gerrard, etc.

> "...Please advise your bookers that they are to carry out these instructions and that no changes are to be made in them without first being taken up with the writer."

These periods of protection may be contrasted with the periods of protection required against independent houses.

CANADIAN UNIVERSAL FILM CO. LIMITED

In regard to this exchange, there are a number of letters showing that they have concurred in the demands of Famous Players.

On August 30, 1928, Mr. Hague, General Manager, Canadian Universal, wrote Mr. Robson in regard to Ottawa:

> " My understanding with you was that we wouldn't book anything under thirty days after the Imperial and forty to sixty days after the Regent, and I notified our bookers accordingly. On the Hull proposition the same would apply, with a further length of time if possible... I understand what you want and we will try and live up to same for you."

On November 14, 1928, in regard to the Algoma Theatre, Sault Ste. Marie, Ont., Mr. Law, Branch Manager at Toronto, wrote Mr. Robson:

> " I have instructed our booker to grant you this protection on the new west end theatre, which is shortly to open in this town."

On November 14, 1928, Mr. Law wrote to Mr. Robson regarding protection on the Regent and Imperial theatres, Ottawa:

> " Would advise that the writer has been in connection with Mr. Leduc, Manager of our Montreal office, and he advises that this protection will be granted you in Hull."

COLUMBIA PICTURES OF CANADA LTD.

On March 8, 1930, Mr. Rosenfeld, General Manager, wrote Mr. Robson:

> " Referring to your letters of the 6th, we are to-day advising our Montreal Manager that you are to receive forty-five days protection on any features that play the Auditorium Theatre, Quebec, and also the same protection with respect to features of ours that play the Palace, Capitol, Loew's or Imperial, Montreal first run."

On May 30, 1930, Mr. Rosenfeld wrote Mr. Robson regarding the Ottawa situation:

> "As requested we will be glad to allow you sixty days protection on any of our pictures that you use first run in Ottawa."

FAMOUS LASKY FILM SERVICE LTD.

There are a large number of letters from Mr. Robson to this exchange on the subject of protection, the replies to which are not in the file. I am, however, satisfied that the requirements were complied with.

On March 7, 1930, Mr. Milligan, General Manager of this exchange, wrote to Mr. Robson:

> " Since talking to you the other day, I have again written our Montreal Exchange very definitely regarding protection. Am quite sure your theatres will have no further trouble in this connection with our Company.
>
> If you hear of any further infringements on the protection period, would thank you to kindly advise me."

On March 14, 1930, Mr. Milligan wrote Mr. Robson:

> "This has been taken up as a serious matter with Mr. English, who has assured me that from now on he will give you the utmost in co-operation regarding protection, and hope the other companies will do the same."

Mr. English was the Montreal Branch Manager of Famous-Lasky Film Service, Ltd.

F.B.O. PICTURES CORPORATION OF CANADA, LTD., NOW R-K-O DISTRIBUTING CORPORATION OF CANADA, LTD.

On June 4, 1928, Mr. P. C. Taylor, General Manager, wrote Mr. Robson:

> "This will acknowledge your letter of May 23, requesting sixty days protection on first run pictures in Ottawa as against second run in Ottawa, Hull and in Aylmer."

On November 15, 1928, Mr. B. D. Murphy, Branch Manager at Toronto, wrote Mr. Robson:

> "Upon my return to the office I find your letter of Nov. 5th, suggesting that the Algoma Theatre be given 60 days protection over the new theatre which is opening in the west end of Sault Ste. Marie.......... I think it would be quite possible to arrange 60 days protection over the house you speak of."

FOX FILM CORPORATION LIMITED

On January 16, 1928, Mr. O'Loghlin, then Canadian District Manager, wrote Mr. Robson:

> "I have your letter of the 16th inst., regarding protection for Woodstock over Ingersoll, and I am handing your communication over to Mr. W. C. Gehring, Manager of the Toronto Branch, with instructions to co-operate with you to the fullest extent possible."

On January 19, 1928, on the same subject Mr. Gehring wrote Mr. Robson:

> " The contents of your communication are noted and this Branch will be glad to comply with your wishes in the matter."

On May 2, 1928, Mr. O'Loghlin wrote Mr. Robson with reference to the Royce Theatre and also the Weston-Mt. Dennis run:

> ". . . and the request you make therein will be taken cognizance of in the selling of our next year's product."

On June 8, 1928, Mr. O'Loghlin wrote Mr. Robson:

> "Please be advised that we will give you the 60 days protection asked for on your first run houses in Ottawa over Hull, Aylmer and 2nd run Ottawa."

On August 30, 1928, Mr. O'Loghlin wrote Mr. Robson:

> "As requested in your letter of Aug. 25th, we will give you the Regent Theatre, Ottawa, protection asked for over second run."

On September 5, 1928, Mr. O'Loghlin wrote Mr. Robson in further regard to the Ottawa situation:

> "We will give you the co-operation asked for."

On November 17, 1928, Mr. O'Loghlin wrote Mr. Robson in regard to subsequent runs in Hamilton advertising pictures while playing first run pictures, and says:

> "........I have to-day instructed our Toronto office to co-operate with you to the fullest extent possible."

REGAL FILMS LTD.

On August 16, 1928, Mr. H. O'Connor, Branch Manager, Toronto, wrote to Mr. Robson:

> "As requested in yours of the 14th instant, you will receive the full co-operation of our office in the matter of supplying Chatham with feature pictures ahead of Wallaceburg."

On August 30, 1928, Mr. H. L. Nathanson, General Manager of Sales for Canada, wrote to Mr. Robson:

> "I have advised our Toronto Branch *re* protection on all pictures playing the Regent Theatre, Ottawa, over second runs."

On October 11, 1928, Mr. H. O'Connor wrote Mr. Robson in regard to the Regent Theatre, Ottawa, regretting that the picture "The Mysterious Lady" had played at the Fern Theatre within the protection period given to the Regent.

On November 13, 1928, Mr. H. L. Nathanson wrote to Mr. Robson in regard to protection of the Algoma Theatre, Sault Ste. Marie, on the new neighborhood theatre that is to be built:

> "...please be advised that I have instructed our Branch to see that the Algoma is protected as requested in your letter."

On November 16, 1928, Mr. Robson wrote to Mr. H. L. Nathanson and to all other exchanges as follows:

> "I have been advised that the three theatres operated by Mr. Guest in Hamilton —the Delta, Empire and Queen's—have been advertising pictures that play the Capitol, Tivoli and Pantages Theatres at the same time as or even before we play the pictures at those down town houses.
>
> "This must be discontinued at once... Further, we must insist that you notify Mr. Guest and all other suburban managers that they must not advertise these pictures until 30 days after they have played the Capitol, Tivoli or Pantages Theatres... Please let me have an acknowledgement of your acceptance of this understanding."

R. K. O. DISTRIBUTING CORPORATION (CANADA) LTD.

On February 28, 1930, Mr. Robson wrote to Mr. P. C. Taylor:

> "Thanks for your letter of February 26, *re* protection in our four Montreal theatres against subsequent runs. I note that you have advised your Montreal manager accordingly. . . .
>
> "However, as you have assured me that the protection will be adhered to, I will not ask for contracts."

UNITED ARTISTS CORPORATION LTD.

Mr. H. M. Masters, General Manager, wrote to Mr. Robson on January 16, 1928, in reference to protection for Woodstock over Ingersoll:

> "We have always watched this protection very closely and there is no need to worry about it, as it is part of my instructions to the Toronto booker."

On December 20, 1928, Mr. R. Knights, booker of the United Artists in Toronto, wrote Mr. Robson with reference to protection on Welland:

> "Please be advised that in all cases Welland is given the preference over Port Colborne..."

WARNER BROS. PICTURES, INC.; FIRST NATIONAL PICTURES, INC.; AND VITAGRAPH

On February 25, 1928, Mr. B. F. Lyon, Canadian Sales Manager of Vitagraph Inc., selling Warner Bros. pictures, wrote Mr. Robson:

> "This will acknowledge your letter of February 22, relative to protection of feature pictures in certain of your theatres before they play B. & F. circuit.
>
> "A copy of your letter has been turned over to Mr. Shaw, our booker, who will be careful to follow your request."

On August 10, 1928, Mr. Paynter, Branch Manager at Toronto, wrote to Mr. Robson in reference to pictures playing Bowmanville ahead of Oshawa:

> "We will check this in future, however, and do not think you will have any further complaint in this respect."

On September 1, 1928, Mr. Lyon of Warner Bros., wrote Mr. Robson:

> "Replying to your letter of August 25, relative to the sixty day protection given on the first run pictures, shown at the Regent Theatre, Ottawa, and the ninety day protection on the same picture, later played in Hull. Please be advised that if you do not give us any more business than you did last season, it will not overtax our minds to remember your request.
>
> "With regard to the ninety day protection I think that this is ridiculous. We are willing to accept the same protection as Ottawa, that is, sixty days."

On November 7, 1928, Mr. Lyon wrote to Mr. Robson:

> "Replying to your letter of November 5 with reference to sixty days protection clause in Sault Ste. Marie, . . . we will accede to your request of sixty days protection over the second run houses."

On November 14, 1929, Mr. Meyer, Branch Manager of Vitagraph Inc., at Toronto, wrote to Mr. Robson:

> "We note that the Beach is to have no protection over the Teck, Prince of Wales and Grover Theatres, except that the latter theatres are not to advertise while the picture is running at the Beach. We notice however that the Beach is to have thirty days protection over the Gerrard and two weeks over the Eastwood. We also note that the protection which the Alhambra had on the York is to be reduced to two weeks.
>
> "We shall be guided according to the above information."

On January 23, 1930, Mr. Lyon wrote to Mr. Robson:

> "...we have never agreed to an exclusive showing of our pictures in downtown Hamilton, but have always protected you in every way we could when you played first run at the Tivoli, Capitol or Pantages."

On February 5, 1930, Mr. Lyon wrote to Mr. Robson in regard to downtown runs in Hamilton on Warner pictures:

> "We of course understand that you want protection in the future and where it does not interfere with present contracts, you are entitled to it at the present time... We will do everything possible to comply with your request."

On March 4, 1930, Mr. Lyon wrote to Mr. Robson in regard to protection in Montreal and Quebec, and says in part:

> "Naturally we expect to give you every co-operation possible."

On May 7, 1930, Mr. Robson wrote Mr. Paynter of First National Pictures Inc. in regard to the Runnymede Theatre:

> "We request that you give definite instructions to your bookers that the proper protection is to be afforded us in all our theatres according to the protection schedule which was furnished you."

On May 9, 1930, Mr. Paynter wrote Mr. Robson:

> "I have given definite instructions to our booker that proper protection is to be given to the Runnymede theatre."

On June 3, 1930, Mr. Lyon wrote to Mr. Robson regarding the new Capitol Theatre, Galt, having three weeks protection over Preston, and says in part:

> "These instructions have been given to our Toronto branch office, and they will be guided accordingly."

5. PROTECTION ACCORDED FAMOUS PLAYERS' THEATRE AT SMITHS FALLS AGAINST PERTH THEATRE

Before finally disposing of the subject of protection, comment should, I think, be made on the situation as between Smiths Falls and Perth, two towns in Eastern Ontario, situate about 9 miles apart. The Perth theatre is independently owned and operated by the Estate of the late Honourable J. A. Stewart, being managed by Mr. Hugh O'Donnell, a practising barrister in Perth, and a former partner of the Honourable Mr. Stewart. The Perth theatre is known as the Perth, and the theatre in Smiths Falls is known as the Capitol and is a Famous Players' house. The seating capacity of the Perth theatre is 800, while that of the Capitol, Smiths Falls, is 790 (Ex. 6, p. 10). The population of Perth is about 4,000 and Smiths Falls in the neighbourhood of 7,000. Last year extensive improvements were made in the Perth theatre costing about $50,000.

Mr. O'Donnell, in his evidence before me, stated that he had made an agreement with Famous-Lasky for certain pictures which he had contracted for, and that these pictures were shown in Smiths Falls and he could not get them as they were cancelled. These had been actually booked by the booker of Famous-Lasky to play the first week in which the Perth theatre was opened after the improvements were completed on November 10, 1930, contracts having been made early in October, and definite dates were given for definite pictures, and on November 4, Mr. O'Donnell received a letter from Famous-Lasky, part of which is as follows:

> "Upon checking up the releases of our present product we find that the Capitol Theatre, Smiths Falls, has been playing our pictures up so close to release date that, for the present, it is impossible to give you any pictures ahead of Smiths Falls until some new releases come in."

Mr. O'Donnell communicated by telephone with Mr. Stuckey, the booker, in Toronto, for Famous-Lasky and told him that unless the bookings were confirmed, he would prefer to have the contract cancelled, and the contract was cancelled.

Mr. O'Donnell made contracts with Regal Films for Metro pictures, containing a clause giving him half of the pictures prior to Smiths Falls. His evidence on page 5687:

> "The actual way that it works out is that we don't get any pictures ahead of Smiths Falls. We haven't had a picture ahead of Smiths Falls that they have played, or that they probably will play. What we get under our contract are pictures that are not booked for them at all. Where there is a picture which they are playing and which we are playing, we are not even advised that it is available until after it is shown there. That has happened time after time with every one of them."

Mr. O'Donnell stated that this applied also to the Fox Film Corporation, Ltd.

On page 5691, Mr. O'Donnell said:

> "We have played so far fourteen Fox pictures, and I think there are only two—there may be three, but I think there are only two—that have not been shown at Smiths Falls, and that we have played after them, under that contract, so far."

In the result Mr. O'Donnell has had to play ten of these pictures after Smiths Falls (Evidence, p. 5692).

Mr. O'Donnell says he tried to get Pathe pictures and that he was informed by the distributor that

> "they couldn't give them to us, or give us any portion of them ahead of Smith's Falls."

The Manager, Mr. O'Connor, told him that the Smiths Falls theatre had thirty days protection over him on Pathe product.

On page 5699, Mr. O'Donnell says:

> "Well, my complaint is this. I am not very much concerned about protection one way or the other, except this, that our hands are absolutely tied. They advertise in our town, and advertise solely on the ground—'See the pictures when they are new' . . . by the repetition of that phrase, will eventually give the patrons who come to our theatre the impression that we are just a second-rate house, and we are not entitled to be looked upon as that. We have a larger investment than Smiths Falls. . . . First of all they utilize their strength by not giving us a choice of pictures on a fair basis with them, and then, utilizing that, they come up and use it against us in our own town. I wouldn't have minded if they were fair, but they make a contract that they know they won't carry out."

6. FINDINGS REGARDING PROTECTION

I have, from the evidence, and the exhibits, come to the conclusion that Famous Players Canadian Corporation, Limited, with the concurrence of the distributors named in the Order in Council, namely:

Canadian Educational Films Limited,
Canadian Universal Film Co. Limited,
Famous Lasky Film Service Limited,
First National Pictures, Inc.,
Fox Film Corporation Limited,
R.K.O. Distributing Corporation of Canada, Limited,
Columbia Pictures of Canada, Limited,
Regal Films Limited,
United Artists Corporation Limited,
Warner Brothers Pictures Inc., and
Vitagraph Limited,

and also with the assistance in 1930 of Motion Picture Distributors and Exhibitors of Canada, has demanded and obtained for the theatres owned and/or operated, and/or controlled by it, or with which it has affiliations, protection for periods longer than is necessary for the proper conduct of the business of these theatres, by reason of which Famous Players has been able to lessen, by reason of actual or tacit agreements or arrangements, and has lessened competition in many areas and districts, and generally in Canada, in the supply of motion picture films to the independent theatres and that this has been detrimental to the public in that:

(1) It has cost the public more money.
(2) It has prevented large sections of the public from seeing pictures while they are still fairly new.
(3) It has given Famous Players and its affiliations an undue advantage over its competitor exhibitors, and over the public generally in Canada.

I consider that this advantage is not one which one might expect to legitimately flow from the large purchasing power which Famous Players has.

Included in this finding are the following affiliations of Famous Players, also mentioned in the Order in Council, namely:

B & F Theatres Limited,
Eastern Theatres Limited,
Premier Theatres Limited,
Mansfield Theatre Company Limited,
United Amusement Corporation Limited,
United Theatres Limited,
Theatre Holding Corporation Limited,
Hamilton United Theatres Limited,

in all of which Famous Players, as previously indicated, has a substantial interest, and which are, by reason of their control by, or agreements with, Famous Players, in the same position as Famous Players itself.

I also find that Paramount Publix Corporation, though not directly engaged in business in Canada, is by its stock control and consequent responsibility for the policy of Famous Players, party to these transactions.

As to Paramount Famous Lasky Corporation, this is the predecessor of Paramount Publix Corporation as heretofore stated in this report and its position does not therefore require to be considered.

Radio-Keith-Orpheum (Canada) Limited is not mentioned in the Order in Council, but is in the same position as the other affiliated companies above mentioned.

I am not unmindful of the fact that United Artists Corporation has not sold any of its pictures to houses for which Famous Players directly book for the season 1930-31, although they have sold to United Amusement Corporation Limited, booking of which is done by Mr. Nicholas of Montreal, an executive of that company, but his booking is with the assistance, if required, of Famous Players. United Artists, however, did sell to Famous Players houses, and did give an undue amount of protection in previous years.

It seems appropriate, before disposing of the question of protection, to mention that the positive prints used in the projection machines in the theatres, and which are either imported from the United States or made from the negative prints by the Associated Screen News Company of Montreal, are, for the individual picture, limited in number. The evidence is that the number of positive prints available in Canada varies from 4 to 10; for a feature picture it is usually about 8. These positive prints cost for a six-reel picture in the neighbourhood of from three to four hundred dollars, and it is obvious that there is no object in having more made than can be economically used.

In the nature of things, therefore, the distributors would first send the films to the theatres from which they would expect to derive the greatest revenue, and, bearing this in mind, if the distribution of these positive prints were made to the different theatres for which the right to show the picture has been purchased on some equitable and fair basis, it seems to me a question as to whether protection, after all, is of that importance which Famous Players seems to attach to it, if protection, as we have it in Canada, is to be a means of proper distribution, rather than a means of acquiring an undue and improper advantage.

It has been suggested that pictures might be shown simultaneously and without regard to priority of run, or that they might be run, as the expression in the industry is, " day and date ". It is argued in this connection that the effect might be to reduce the ability of the first run downtown theatres to pay the large rentals now paid by them, and to increase the ability of the second and subsequent run theatres, so that the pictures might be more generally shown at a much less cost to the public. There seems, however, a practical difficulty in the way of doing this. It would require an additional number of positive prints, and if as at present, say, 10 prints are made for an individual picture at an average cost of even $300 this would mean a film cost of $3,000 per feature picture, and as there are 462 pictures proposed for this year, that means a film cost of $1,386,000. If the cost of the positive prints for comedies and short subjects were added to this, the film cost would be well over a million and a half dollars. If the 10 positive prints were used for intensive simultaneous showing, for example, in Toronto, the other cities throughout Canada, and perhaps more particularly Montreal, Hamilton, Winnipeg, Vancouver and Halifax, might well complain, so that in order to carry out such a program, it would probably be necessary to at least double the number of positive prints. This would mean an annual charge on the industry of over three million dollars, which would appear to be unreasonable.

VII. BLOCK BOOKING AND BLIND BOOKING

While it appears convenient to deal with these two subjects as one, it is nevertheless important to keep in mind the distinction between them, as defined by definitions 8 and 10.

Before the opening of a new season, the exchanges have lists of pictures which the producers whom they represent propose to release during the season ensuing on the next 1st of September. The invariable rule is to submit this list of proposed releases to Famous Players before approaching the independents and to endeavour to sell to Famous Players as many of the pictures as it is possible for exhibition in the Famous Players theatres, after which, if no bargain is made with Famous Players, the independents are approached. If a bargain is made with Famous Players for a portion of the proposed releases, the exchanges endeavour to sell the balance of the pictures to the independents.

In some cases also, in what are called "split towns," (see definition 40) the exchange managers are able to induce Famous Players to give up one or more of the selections already made by them, to enable the exchange to make a contract with an independent for a split of the pictures. It is the general rule that the pictures are offered both to Famous Players and the independents in blocks of either the entire season's product or one half of the number of pictures proposed to be released, and in some cases, one quarter. The blocks of pictures are not in all cases uniform. As at the time of these dealings the pictures are not made, the purchaser must exercise his judgment as to what pictures he desires to show, having regard to the producer, the stars, and the subject, and to his own opinion as to the probable box office attraction of the pictures. Occasionally pictures are condemned by the censors, or the pictures are so otherwise censored and such portions deleted, as to render the picture in effect unavailable for showing either in Canada as a whole, or in certain provinces thereof, and the contract for the showing of the individual picture either cancelled or substitution made.

Practically every exhibitor who gave evidence stated that he could not select the pictures which he wished to show but was forced, by reason of this system of block booking, to buy the whole of the group of pictures which is offered to him, or a substantial part thereof, and that this has four principal effects:

(1) The independent has to buy from one exchange more pictures than he desires to buy from that exchange, and his requirements for the season thus being filled with three or four exchanges, he is unable to purchase pictures from the other exchanges at all.

(2) He is forced to buy more pictures than he can possibly show in his theatre.

(3) He is forced to buy undesirable pictures and ones which he would not purchase or exhibit were he not forced to contract in this way, and

(4) He is in difficulties with the exchanges with whom he has contracted at the end of the year and has to make some arrangement, either by payment for the pictures or by partial payment, or by taking again from that exchange more pictures for the following season than he wants. In many instances exhibitors find themselves with awards of arbitration boards against them, which, if not complied with, involve the theatre holders in further difficulties, as will appear later in dealing with the arbitration clause of the Standard Exhibition Contract.

It may be argued that the independent exhibitor does not need to overbuy, and that if he does, it is his own fault. It is quite apparent to me, however, from the attitude of the independent exhibitors who appeared as witnesses, that there is on their part a real anxiety as to whether they will be able to obtain a supply of suitable pictures at reasonable prices to enable them to operate their theatres. True, there are enough pictures to go around, and if an exhibitor is content to exhibit to his patrons the poorer and cheaper class of pictures, he can probably obtain sufficient of these, and is, in fact, in the position of having to exhibit many of them. This anxiety is accentuated by reason of the undoubted fact that Famous Players has the first opportunity in the matter of selection. The system of block booking and blind booking, and the fact that Famous Players has first choice of selection, are responsible for this condition of affairs.

1. *Mr. Adam Bailie,* who is President of the Exhibitors Co-Operative Limited, and who is the owner and operator of the Cum-Bac Theatre on Dovercourt Road, Toronto, an independent theatre, states he has been showing pictures for eighteen years. He says that when talking pictures came in, nearly two years ago (Evidence, p. 4611), he got two pictures from Warner Brothers, and after that time, for about three months, could not get anything but synchronized pictures. He was given the reason, "they were not available to him." He applied to all the exchanges. The Famous Players' opposition house, the College Theatre, was not equipped for sound at the time, and also there were "a lot of pictures released downtown that were available that I could have had"; these pictures were subsequently played at the College Theatre when they got sound equipment. Mr. Bailie is content to run after the other theatres in his zone. On page 4628, Mr. Bailie says that after he went into sound, in August, 1929, he got two pictures from Warner Bros.; he had contracted for everything they had: "I was given to understand that I could not buy anything but all they had, and had to take them all or nothing, that they would be available for me from the time I started to operate." As the pictures were not satisfactory, he cancelled.

2. *Mr. James A. Boyd* operates the Model Theatre on Danforth avenue, owned by his mother-in-law, Mrs. Karn, and has operated same since July, 1914. He is three blocks west of the Famous Players Palace Theatre, and about three blocks east of the Famous Players Danforth Theatre. On page 4671, his evidence is as follows:

> "Q. Why did you take 'Westerns'?—A. They would take the big pictures out and that was what was left.
> "Q. Who?—A. The exchanges. If they had 52 pictures, you had to take them.
> "Q. Who told you that?—A. Different exchanges.
> "Q. Which ones?—A. Universal.
> "Q. What did they do?—A. Sold me the pictures. I had to take them all or none.
> "Q. How many pictures did they sell you?—A. If they had 52 that is what I had to buy.
> "Q. One hundred per cent?—A. Yes.
> "Q. Or none?—A. Yes.
> "Q. Is that what they call block booking?—A. I don't know whether it is block booking or bluffing you into booking it."

3. *Mr. Patrick James Nolan,* proprietor of the Avalon Theatre, Ottawa, on page 4720 gives the following evidence:

> "Q. Now, when you are buying these pictures, do you ever discuss the terms of the contract presented to you by the exchanges?—A. Oh, yes. The only complaint that I have got is that particularly the Famous Lasky Corporation insist upon too great a proportion of pictures being played in the house.
> "Q. Is that what is called block booking?—A. Yes.

> "Q. What has been your experience in regard to that matter?—A. In our particular case at the Avalon we require 104 pictures a year. That is two a week. Famous Lasky insisted on selling us 36 pictures. That would be one-third of our product, of what we would use."

He further says:

> "I refused to consider the proposition at all; we would buy 15 or 20 pictures but wouldn't buy 36."

Asked if he was able to make a contract with them, he said "No, they refused."

> "Q. Did any other exchanges take the same attitude?—A. No.
>
> "Q. Just the one?—A. We have bought product from everybody except Famous Lasky and my friend Taylor. That is R.K.O."

On page 4722 he says:

> "You have got to be over-bought in order to get product. . . . In order to get pictures available for the dates that we require, on account of the fact that sometimes certain pictures are held back, not run, you understand, or held up by the Censor Board or something of that kind, it means that we have to buy a certain production from the various exchanges over and above what we will require during the year.
>
> "Most of the exchanges on that second run proposition will sell half their product as a general rule."

Speaking of the other exchanges, on page 4724, he says:

> "That is about the proportion they would want you to buy—about 20, 20 to 25 out of 48. Of course, they would like you to sign for 48."

On page 4725, his evidence, in speaking of the making of a contract in July or August for the coming season:

> "Q. You don't know at that time, sometimes, what the titles of the pictures will be?—A. Yes.
>
> "Q. Is that correct?—A. That is right.
>
> "Q. You know that certain players are intended to produce certain pictures? —A. Yes.
>
> "Q. And it may be that those pictures are not produced at all?—A. Yes.
>
> "Q. Or that they may be censored?—A. Yes.
>
> "Q. That is, wholly censored?—A. Yes.
>
> "Q. Or partially censored?—A. Yes.
>
> "Q. That is, there may be deletions?—A. Yes. That would not affect our contracts, though. They would make you take it anyway. Famous Players don't run any deleted pictures, but they force us to do it."

Asked why he says this, his answer is:

> "Famous Players don't take any pictures unless it has what we call 'clicked,' 'gone over,' and sometimes we buy pictures second run, and the exchanges then, because Famous Players won't run the picture first, tell me I have to run it and it is deleted. We had one picture last year 'Carnation Kid' with over 600 feet deleted, and we had to play it whether we liked it or not, pay for it or play it.
>
> "Q. Who produced it?—A. Famous Lasky.
>
> "Q. Paramount Publix?—A. Oh, yes."

On Page 4726 he says:

> "This picture was not run in a first run house in Ottawa at all."

4. *Mr. Hyman King,* owner of the Grant Theatre at Oakwood and Vaughan road, Toronto, an independent theatre, says on page 4860:

> "How is it I go into a house and I will see four or five pictures which I think suitable for my house, and I will say I want to buy the four or five pictures, but they say—'You can't buy the four or five. You have got to take ten with them.'"

On page 4848, Mr. King says:

> "I asked for a picture last week from Warner Brothers that played three weeks ago at the Oakwood, and I wanted March booking and they told me that they can't give me a booking until the 1st of April. They will give me an inferior picture."

The picture he wanted was a Warner Brothers, called "Life of the Party." This was a picture he had contracted for for the season 1930-31, contract being made about June, 1930.

On page 4849, he is asked:

> "Q. Did that contract call for a certain number of Warner Brothers pictures?—A. I had to buy them all or none at all. It was a case of Hopkins' choice.
>
> "Q. You mean Hobson's choice?—A. Yes. I wanted to buy ten or fifteen and I couldn't buy them, and I had to buy them all or none.
>
> "Q. How many did you buy?—A. I think it was thirty-five or thirty-six.
>
> "Q. And they won't give them to you?—A. Well, whatever time I went for dates—'Well, we haven't got a date open'."

On page 4850, Mr. King says:

> "I had to go in 1930 and buy in the open market pictures which I practically overbought.
>
> "Q. Whose pictures were they?—A. Warner Brothers a great deal, and some of the Columbia. But the Columbia, I got pretty fair dates from them."

He also bought 21 from Pathe and he only got a date on one picture, and

> "It was taken out from me, and finally I got a date later on."

He further says:

> "They didn't give no reason at all. I suppose it was not played at the B. & F. circuit; that is the only thing I can make out of it."

He had to go out and buy another picture to take the place of this one.

5. *Mr. Abraham Polakoff*, owner of the Mayfair on Jane street in the west end of Toronto, an independent theatre, and the Kingswood on Kingston road in the east end of the city, on page 4881, says:

> "I would have to buy in a block in a great many cases. I have bought small portions of a program, but if I went out in August or September and wanted to buy the product for the coming year I doubt whether I could buy it unless I was prepared to take the whole hundred per cent."

6. *Mr. Harry Lester*, operating the Bonita Theatre on Gerrard Street East, and owner of the La Reta, which is closed, gives evidence on page 4909 as follows:

> "I happened to be in a bad position last year because I bought up a lot of bad pictures, because I couldn't get the good ones, sir. When I came to play them I found out that I couldn't play them, and naturally I got behind the dates. . . .
>
> "Q. When you were offered a certain number of pictures, that is, a group of pictures, say 25, were you offered a better price for those than you would if you were bidding for, say, 5 individual pictures?—A. Well, they tell you, sir—when you come in and say—Let me think. On the beginning of the season you mean?
>
> "Q. Yes. A. Well, on the beginning of the season I don't think I could buy 5 pictures, sir, I don't think so. In fact, I am sure I couldn't buy 5 pictures of any exchange, that I wanted.
>
> "Q. Did you ever try? A. Yes, sir.
>
> "Q. From whom? A. Oh, I remember one instance from Metro-Goldwyn.
>
> "Q. How many pictures did you ask for? A. I
>
> BY THE COMMISSIONER:
>
> "Q. That is Vitagraph. A. No. Metro-Goldwyn-M.G.M., the Regal Films.
>
> "Q. How many pictures did you ask for? A. Oh, I don't know. I think, 15 or something. . . .
>
> "Q. And did you pick out the pictures yourself? I mean, did you name them? A. Well, naturally I would.
>
> "Q. What did they tell you? A. At the beginning of the season I couldn't buy.
>
> "Q. I am asking you about this occasion that you have referred to. A. well, they would say you would have to buy the group.
>
> "Q. The whole group? A. Yes, sir. . . .
>
> "Q. What you did say, as I understand your evidence, is that you told them that you wanted to buy certain pictures. A. Yes, sir.
>
> "Q. They would not sell you those separately. A. Yes, sir."

Further on he says:

> "They wouldn't sell to me. If I wanted to pick out ten or fifteen pictures of the forty or fifty they wished to sell, I couldn't buy.
>
> "Q. At any price? A. Well, I don't remember discussing price, but I understand them to say that I would have to buy the whole block of pictures."

On page 4913:

> "Q. If you are willing to pay the price, can't you buy any picture if you can outbid anybody else? A. No, sir.
>
> "Q. Can you buy a group of five or ten if you outbid anybody else? A. On the beginning of the season?
>
> "Q. Yes. A. No, sir."

7. *Mr. Donn Benjamin Stapleton,* owner and operator of the Centre Theatre, Sparks St., Ottawa, on page 4788 gives evidence as follows:

> ". . . . there really was not enough information pertaining to the picture to enable me to buy the picture intelligently.
>
> "Q. It would have been to Warner Brothers' interest, would it not, to have sold you pictures? A. Yes, it would. In certain stipulations they possibly figured that I should use 15 or 18 pictures, but in order to get those 15 or 18 pictures I had to take in a lot of other pictures which were unsatisfactory to me. As a matter of fact, that is the principle of pictures the way they are sold at present.
>
> "Does that apply to all exchanges or not? A. Practically all of them, yes.
>
> "Q. To what do you attribute that condition of affairs? A. Well, possibly it is due to the fact that the exchanges have a certain picture which has a high rating, and in order to get play dates and runs on the other pictures which are difficult, they use that picture as a lever for you to purchase that particular picture and then buy six or seven other pictures which are not so good."

Further on he states:

> "The distributor has something to do with it in this particular case due to the fact that those pictures were offered to me and I refused to take one or two pictures along with six or seven other pictures, that those one or two pictures which I would be prepared to pay a very fair rental for are booked in at one of the Famous Players theatres, and the other pictures are booked in a very, very ordinary theatre —the Imperial or Keith's Theatre, where they receive a much less rental than they would from the Centre."
>
> "Q. Do you mean less rental than you would be willing to pay? A. Yes.

8. The evidence of *Mr. Thomas Walton,* proprietor and owner of the National Theatre on Yonge Street, between Gerrard and Dundas Streets, in Toronto, appears on page 4918, and is as follows:

> "Well, for five years prior to this last buying season, in September I was able to get a clause in my contracts on pictures I bought that I was to play them ahead of the Victoria; but last buying season I went to five of the exchanges that I had bought pictures from and I found that I couldn't get a clause in the contract ahead of Victoria from any exchange that I bought pictures from. They simply told me that it couldn't be done. . . . They just said: 'We can't give you any pictures ahead of the Victoria. The best we can do is to put a clause in your contract that if it plays the Victoria you can cancel it.'"

These exchanges were the Columbia, First National, Warner Bros., Metro-Goldwyn, Famous-Lasky. B. & F. Theatres Ltd., acquired control of the Victoria under an agreement dated March 31, 1930 (Exhibit 100). The fact of this situation is that so far as these exchanges are concerned the Victoria has the first choice and Mr. Walton cannot play pictures in his house ahead of the Victoria, but can play them only after the Victoria decides whether it wants them. Mr. Walton says that in order to get his pictures he simply has to wait until he finds out if the Victoria is going to play the picture and in this way he has great difficulty in keeping his house supplied with pictures.

On page 4930, Mr. Walton says:

> "I have to buy 50 per cent more pictures than I require, because I can't possibly know what I am going to get."

On page 4931:

> "Q. Mr. Walton, where would you be if the Victoria or York didn't play these pictures and you had contracted for 200 or 250 pictures, which is more than you want?—A. I would be left holding the bag. I would either have to pay for them or play them."

9. *Mr. Horace Percy Redway* is the owner of the Crown Theatre at 591 Gerrard St. East, Toronto. He gave up the actual operation thereof when a lease of the theatre was acquired by B. & F. Theatres Ltd., dated March 10, 1930. He states, in evidence at page 4963, that the reason why he gave up his theatre was:

> "——because I couldn't make the contracts that I desired, that would be profitable to me."

On page 4974 he states:

> "——we don't want all the pictures, sir. There are certain pictures that we want; there are certain pictures that we don't want. Some of the pictures we would be better without."

When asked as to the attitude of the distributor if he has to go and try to get pictures instead of the exchange coming to him and trying to sell, he states:

> "It is of latter years, as I am going to tell you. Before, when I opened the Crown Theatre first, I never knew what it was to go to an exchange; I never had to bother to buy pictures; never had to go down and see if I could get pictures, but my office was chuck full every night. 'Can I sell you this?' 'Can I sell you that?' "

10. *Mr. William Stanislaus Brady* operates the Madison Theatre at Bloor and Bathurst Streets, Toronto; he has been in business there for seventeen years. His evidence on page 5021 is as follows:

> "Q. . . . . Now, how is it that when you are buying one or two specials you come to sign two other contracts in regard to specials—the blue or the red contracts, and the programme pictures on the white sheet?—A. Well, the only reason why we do that is because we can't get the specials without signing the others."

BY THE COMMISSIONER:

> "Q. Is there any complaint on your part about that?—A. Well, it seems that the opposition can get the specials without signing up for the programmes, but we can't do that."

On page 5022 he says:

> "Q. That is programme pictures. What is the result when dealing with other exchanges as to the number of pictures for which you contract, all together, in that way?—A. We always have to sign up a group of pictures in order to get a few specials.
>
> "Q. And do you or do you not need all the programme pictures that you sign for in order to get the ones that you do want? Do you need all the programme pictures for which you sign during the course of a season?—A. Well, we just need them as fill-ins—but I may say the pictures that bring in the business are the road-shows and the specials and without those—you see—we would cut off all the programme. But we can't do that.
>
> "Q. In other words, they don't believe in selling you the hide without the tail? Is that it?—A. that is the idea. But the opposition seem to get these specials without—the tail."

At page 5026 he states that they ran a stock company in the theatre from 1926-1929:

> "Because we found our programme wasn't strong enough to hold up without stock.
>
> "Q. To hold up against your opposition you mean?—A. Against the opposition.
>
> "Q. Why was that? Couldn't you get as good pictures as they did?—A. No, we couldn't.——We weren't able to get them and we didn't get them.——The reason was that we were competing against a chain and they had more buying power than we had. Naturally they got the break.——Well they had more of the better grade pictures than we did.
>
> "Q. Any question of price as far as you were concerned?—A. No."

At page 5044:

By the Commissioner:

> "Q. Does this sum up your evidence correctly on that point, that in order to get the pictures that you do want, you have to take pictures that you don't want?—A. Yes, sir."

11. *Mr. Henry Alexander,* operator of the Park Theatre, at Lansdowne and Bloor Streets, Toronto, on page 5278 gives evidence as follows when asked as to his choice of pictures when making his commitments for the season:

> "We can get practically most of the pictures that we want. My trouble is not in getting the pictures, it is in having to buy more than I want. In other words, we have no choice; we either have to take a block of pictures or leave them alone; we cannot pick the class of picture that I would like to see played exclusively at the Park Theatre.
>
> "Q. Does that apply to all the exchanges or only to some of them?—A. The only exception to that would possibly be Tiffany pictures, and maybe such an exchange as the smaller—I think the Excellent Exchange, but that is a small independent exchange."

Mr. Alexander does not think the Excellent Exchange handles feature pictures.

By reason of the above he states, on page 5279:

> "Yes, we always have to overbuy."

At page 5281 Mr. Alexander further states:

> "Q. If I understand you correctly, you say that by reason of the block system being forced upon you as an exhibitor, that the inevitable result of that is that you have to overbuy?—A. Yes, sir.
>
> "Q. Why do you have to overbuy? Why can you not get just enough pictures? A. Well, no house, sir, could thrive or do justice to its public by just confining itself to the showing of one or two programmes."
>
> "Q. When you say 'programmes' you mean blocks of pictures?—A. Blocks of pictures, sir."

By program bookings he means practically all of the pictures which an individual producer expects to release during the season.

On page 5282 he states:

> " Q. There are other reasons why a man actually has to overbuy—I may buy a block of pictures from a particular exchange for any given season, but we are not assured by that exchange just when we can get those pictures to play. In other words, if they release pictures quickly we are forced to take them whether we want them or not, but if those pictures are held back for some reason or another, then we have to go out and buy other pictures to simply keep our theatres open. By doing that we accumulate pictures that we would not accumulate if we could be sure, when we are buying any particular program, as to when we could get these pictures.
>
> "Q. I suppose they are unable to tell you definitely, because they do not know when the pictures are going to be released?—A. Well, doesn't it to a certain extent depend upon whether Famous Players are going to use those pictures?——I would say yes."

On pages 5303-4, Mr. Alexander states, of block bookings, combined with the arbitration clause in the Standard Contract:

> " It is a terrible hardship..........if there was no block booking, you would leave aside and not buy."

On page 5306 he states that in his experience with reference to the Board of Arbitration 90 per cent of the arbitration cases were the outcome of an exhibitor overbuying, because of the imposition of block booking by the exchanges.

12. *Mr. Hugh O'Donnell,* Manager of the Perth Theatre, Perth, Ont., whose evidence has been referred to above, when dealing with the matter of protection, gave evidence on the subject of block bookings on page 5704, as follows:

> "...........but we bought from Regal as an agency, we bought thirty Metro pictures; we bought seven British pictures, and we have bought ten or twelve just

> recently........Pathe pictures........ So we ought to get along half decently with them, ...But I asked them what they would charge us for one picture that was not on our contract, a picture called *'Reducing'* and Mr. O'Connor writes and says:
>
> 'Regarding the booking of the Dressler-Moran picture *Reducing,* for April dates, we might mention that at the present time you have not the picture under contract, and as you are no doubt aware, we cannot spot book M.G.M. pictures.
>
> 'However, our representative gave the writer to understand that Mr. O'Donnell would likely be in Toronto in the course of a week or so, at which time we will be pleased to go into the matter of the balance of M.G.M. 1930-31 product unsold in Perth, which of course includes *Reducing.*'
>
> "Now, I don't know whether he won't sell us that, but that is not fair. We buy all those pictures from them, and then they say, 'Well if you want that, buy the rest of our product.'"

13. *Mr. Frederick Guest,* operating the Empire, Delta, Queen's, which are suburban theatres in Hamilton, the Dundas theatre at Dundas, Ontario, and the Stanley theatre in Vancouver, on page 5741 of his evidence states:

> "Block booking means the death, in the end, of independent exhibitors, as things are now, we have no chance with Famous Players when we are compelled to line up all the product of all these companies. For instance, I have........my opposition at the Delta is a Famous Players' house, the Strand; when I sign for pictures I have got to take the whole year's product of say Warners, and second run ....or none."

One of the exchanges from whom he buys, allows him to "cancel two pictures in a year."

On page 5742 he further says:

> "They (Famous Players) don't have to run their poor ones; they can run their good ones, and let me have the poor ones........ This is unfair. It is unfair to the independent theatres."

On page 5743 he states:

> "Well, if we could eliminate this curse of block booking, the independent theatre men can put on better pictures, and in that way the public gets a better show. As it stands now, the independent has got mighty little chance to show......to express his personal ability............there is no opportunity for self-expression. He is the victim of a rotten system."
>
> "Q. Is there any opportunity to develop this system that you speak of, an individuality for the particular theatre, giving it a rather distinctive character in the form of its entertainment?—A. Those words, Mr. Commissioner, are the words I would like to have used. They express my idea exactly. There is no opportunity ....for the independents to express themselves, their individuality, in their theatres, only to a limited extent. We run pictures, sometimes, we are ashamed to run. I do, I am sorry to say. I wouldn't run them if I could help it, but it is a rare thing that an exchange will cancel your picture and give you a better one."

On page 5749 Mr. Guest states that he confines his own booking to four or five exchanges in the main:

> "Q. And have any of those other exchanges pictures which you would like to get?—A. Yes.
>
> "Q. Why don't you get them?—A. I couldn't get them,—they would ask me right off to take the whole bunch.
>
> "Q. What would be the result if you went to the eight or nine exchanges?—A. I couldn't take them all. I would have too many pictures."

He says that if the exhibitors could spot book all their pictures they could get good ones.

14. *Mr. H. McEwan Anderson,* who is the President of the North Bay Theatre Company, which owns and operates the independent house in North Bay, called the Royal, in his evidence at page 6090 *et seq.,* discloses that a situation developed there, by which the theatre, possibly through the fault of the then manager, was in 1929 so much overbought that the exchanges had called a meeting and agreed to an all round reduction of some 40 per cent.

15. *Mrs. Joshua Smith,* Editor of the Canadian Moving Picture Digest, and who has had some years' association with the moving picture business, particularly through the organization of various moving picture associations of exhibitors, and who at one time was a member of the grievance committee of exhibitors who formed an association known as the Moving Picture Theatre Owners in Canada, on page 5659 says:

> "Well, I don't remember that word 'protection' at that particular time. I think it is a disease that has just struck the industry lately in its most virulent form. It may have been a latent microbe, but it seems to have developed in the last two or three years with amazing rapidity."

On page 5661 she states:

> ". . . .the objection to that is this, that it gives all the revenue into the hands of just a little group instead of giving other people a chance to get a little bit of that revenue."

On page 5866, Mrs. Smith says:

> "Well, the trouble with all these existing conditions of doing business is that they all become obnoxious because of certain other conditions that prevail. In themselves a good many of these conditions would not be as pernicious as they are, but under certain existing conditions they become pernicious, because, if the Famous Players Canadian Corporation can have the power to select the best pictures and just leave the others, naturally to buy a group of pictures, after the Famous Players has done all its picking, would make buying of those pictures absolutely harmful, not only in the public interest, but in the exhibitor's interest. But if a man had a chance to go in there and compete and buy a group of good pictures—the good ones and those that are not quite so good, because you cannot always make 100 per cent pictures, as we term it—if a man had a chance just to go in the same as anybody else in this country and buy what he wanted to buy that way."

On page 5867 she states:

> "...but exhibitors are sometimes forced to buy more pictures than they want, to protect themselves... against being left without product."

On page 5868 Mrs. Smith further states:

> "....I want to say that I have known distributors in this city that wanted to do business with the independents and simply couldn't. I want to say that they have not liked the idea of permitting Famous Players to select their best pictures and leaving them with the rest to give to the independents."

16. *Mr. Haskell Masters,* General Manager of Canadian exchanges for the United Artists Corporation, Limited, on page 6812 says:

> "A. We don't block-book pictures.
>
> "Q. You could not.—A. Not according to our producers' contracts. We do try to sell every exhibitor we call on every picture we can. It would save expense Instead of going back, say, this year and selling the seventeen pictures in seventeen trips, we try to sell them on the first trip.
>
> "Q. Do you contract at the beginning of the season like the other exchanges?—A. In the last three years we have...
>
> "A. We start selling about the 1st of August."

On page 6813:

> "The only sensible sales policy in the selling of motion pictures is to sell the important accounts first, or sell them in sequence of importance. That is the way we sell our pictures, and that is the way we instruct our salesmen who represent us to sell them everywhere. In other words, we won't go fooling around with a $15 account if we have got a $1,000 account to worry about".

On page 6988:

> "There are a number of the exhibitors who over-bought... I think that exhibitors buy more pictures than they can use".

Mr. Masters says this applies also to Famous Players. Mr. Cohen, however, has pointed out that they buy less than they require, keeping a number of open dates for spot booking during the season, but this must not be confused with the right of first choice which Famous Players have in respect to a number of pictures, but, being the case that where they are not actually and definitely committed to take more than a certain number of pictures, their arrangements are such that they have the right to select a larger number if they choose so, with practically all the exchanges with which they have commitments.

The United Artists are in a somewhat different position from the other exchanges in regard to block booking, in that they represent the productions of several artists who make their own pictures, as has been previously pointed out in this report, and I understand that most, if not all, of the artists affiliated with this company insist upon having their contracts made independently of the productions of the other artists, so that pictures sold in block by this exhibitor would be those of an individual artist and not the whole of the pictures distributed or a block of the total distribution. It has been pointed out that their contracts have at the top of them " Sold individually on Merit ", and Exhibit 318, a list of contracts for the ensuing season, shows that the number of contracts for the individual pictures varies considerably. This exhibit deals with several seasons' product.

17. *Mr. Clair Hague,* General Sales Manager of the Canadian Universal Film Company Limited, a subsidiary of the Universal Picture Corporation of New York, says on page 7036:

> " We endeavour to sell the entire group, if possible, but if it is not possible, we sell as much as we can ".

He sells to Famous Players only individually, as the pictures come in.

Asked if it would be to his company's advantage to get a commitment with Famous Players, he says:

> " If we could get a commitment for a sufficient number of pictures, yes ".

Mr. Hague produced a number of contracts indicating that he did sell in blocks, varying in size.

It is to be noted that Mr. Hague, although giving his evidence after the evidence of the independent exhibitors above noted, did not specifically deny their statements as to block-booking.

18. *Mr. Percy Taylor,* Manager for Canada of R.K.O. Distributing Corporation Limited, denies on page 5559 that, in order to get pictures they want, the exhibitors are forced to over-buy. Again he says:

> " I suppose if they want to pick the cream out of the product of ten distributors, it is so ".
>
> " Q. Why shouldn't they?—A. Who will pay for the production of the other pictures?
>
> " Q. The skimmed milk.—A. No, quite thick milk ".

On page 5566, Mr. Taylor says that in dealing with Famous Players this year, meaning for the product for the season 1930-31, he tried to sell Famous Players more pictures than they actually bought, and after considerable negotiations accepted a compromise commitment from them. He states:

> " We wanted a commitment involving a certain number of pictures for each theatre they own.
>
> " Q. And they would not buy them?—A. No, sir. They offered us then a commitment which we thought was entirely unfair on account of involving too few pictures.
>
> " Q. What was unfair about it?—A. That it was not enough product.
>
> " Q. Two men like you and Mr. Cohen sat down to dicker about the sale of pictures. Where does the fairness or unfairness come in?—A. Unequitableness.
>
> " Q. Where does equity come in?—A. From our idea of advantageous merchandizing it was inequitable . . . . Ultimately we accepted a smaller commitment ".

19. *Mr. Frederick Stanley Ravell,* who happened to be in Canada at the time of the hearing, is the representative here of British International Pictures Limited, a producing company in England, and who seems to have had a large experience in England and various parts of Europe in connection with the sales promotion, advertising and exploitation of pictures, and who has also had theatre experience in England in the booking of pictures and the management of theatres, speaks of the Quota Law in England, an Act known as "The Cinematograph Parliament Act 1927, 17 and 18 Geo. V, Ch. 29," and his experience as to the working out of the quota adopted by it and also its provisions as designed to prevent block and blind booking. After stating that an enforcement of the quota provisions of this Act had had a beneficial effect on the picture industry in Great Britain, he was asked, on page 7273:

> "Q. Before you had any quota in England what was the reason why the percentage of British pictures shown in British theatres was so small?—A. The real reason was that up to that time the industry in England was handled on the blind booking system. In other words, the majority of exhibitors had their programs booked from between eighteen months to two years ahead, and it was practically impossible when a British producer made a picture to get that picture dated".

He also states that when he was booking pictures for the circuit which he was connected with, he had to book in some cases eighteen months ahead:

> "Because it was impossible to secure a company's' program of pictures unless you agreed to take so many. . . . Eighteen months' requirements. The pictures were sold in a group of roughly 72 pictures which covered eighteen months ahead. . . . . They were chiefly Paramount, Metro, and in some cases Universal. . . . . Pictures were also sold without being trade shown, the pictures were not screened at all, and they were just simply sold blind. In the year of 1927 an Act was introduced to prohibit pictures being sold on this basis. Before a picture could be sold it had to be trade shown".

Page 7275:

> "Q. The other branch of what has been called block booking was also dealt with by the British Act of 1927, was it not?—A. That was covered at the same time, yes".

Mr. Ravell says that the Act has been a success, notwithstanding the fact that the American producers produced pictures of poor type just to fulfill the quota requirements:

> "In other words, it was their object to kill British production, and by exhibiting pictures of weak and cheap quality, they were able to state that the quota had not been a success, owing to the fact that the pictures were not liked and were not a financial success. This happened in a number of cases I could quote you, where certain American companies produced pictures just for the quota purposes and were not shown outside of England at all".

On page 7300 Mr. Ravell speaks of the difficulty in selling his pictures in Canada, and states:

> "The real cause of the fight was that they were so heavily booked up, so heavily dated, that they hadn't got any dates, and that was the difficulty of getting the pictures in".

Under the British Act above referred to, Section 2 provides:

> "2. (1) As from the commencement of this Act no agreement shall be entered into for the exhibition to the public in Great Britain at a date later than the expiration of the authorized period from the date of the agreement of any film to which this Act applies."

After 1930 the period is six months. Section 5 provides that no unregistered film can be exhibited to the public, and provisions are made for registration. Registration cannot take place until the picture has been trade shown, so that the picture actually has to be produced before it can be licensed. These provisions are designed to prevent block booking and blind booking, and I am convinced that the British Parliament gave due consideration to the necessity for the Act before its enactment.

20. *Findings regarding Block Booking and Blind Booking*

My conclusion, from the whole of the evidence, is that block booking and blind booking prevail generally in the sale of pictures by the distributors in Canada, and that by reason of the consequent over-buying on the part of the exhibitor, and the showing of inferior pictures, the system of distribution by block booking and blind booking is decidedly detrimental to the public.

There is no doubt that the system is fostered and concurred in by the United States producers named in the Order-in-Council and all others represented by distributors in Canada, and I am satisfied that this is the result of at least a tacit arrangement, and certainly of the adoption of a common system of selling, as between the various distributors, and that it does injure trade in films sold or leased to the theatres.

In this connection I also find that the positive films, which are distributed to the different theatres to be used for the exhibition of pictures, are articles of trade or commerce, within the meaning of those terms as used in the Combines Act. I am not satisfied that the evidence as to whether there is an actual express arrangement in regard to block booking has been exhausted, as there has not been a complete examination of the files of the distributors. As indicated above, the United Artists Corporation do not do block booking to the same extent as the other distributors, blocks being confined to the productions of the individual artist or producer member of its parent company in New York.

This system effectively prevents the individual theatre operator from developing an individuality for his theatre, based upon his personal taste in pictures, because he is unable to select for exhibition in his theatre those pictures which he might consider most acceptable to his patrons and most profitable to himself.

It is further obvious that the exhibitor does not want to buy in blocks, and that his reason for allowing this system to be super-imposed upon him is his fear of the competition of Famous Players and of his inability to get pictures to keep his theatre open unless he overbuys and shows pictures which he otherwise would not exhibit in his house.

A further observation should perhaps be made that the commitments which Famous Players are able to make involve a choice and right of selection which is not accorded to the independent houses, except in rare instances and then to a very much less degree.

VIII. BRITISH FILMS

A good deal of discussion took place before me in reference to the showing in Canada of British-made pictures, and while it did not seem to me that this was directly within the scope of this inquiry, I took the evidence, because it might well be that, if it were established that some one or more of those named in the Order in Council by arranging to exclude British films from their theatres or to render the exhibition of them difficult, had combined to do either, or to limit the supply of British films, this would, in my view at least, undoubtedly be to the detriment of the Canadian public.

Mr. Cohen, Managing Director of Famous Players, and Colonel Cooper, of the Cooper organization, profess to be quite anxious to see British films exhibited in our Canadian motion picture theatres, but, in the nature of things, one can hardly expect either to be very enthusiastic in that behalf.

First as to Famous Players. It might well be up to a point, so far as the actual theatre operations are concerned, and as a matter of propaganda, to appeal to the patriotic impulses of the Canadian people, for this company to exhibit a number of British films; but one can easily see that it will not suit Mr. Zukor and his American partners in their control of Famous Players, Famous-Lasky Films Service Ltd., and Regal Films, to push the British idea to a point where it might possibly interfere with the sale and exhibition in Canada of their own United States productions. While Mr. Cohen might personally like to see the idea of British films fostered in Canada, I am convinced that, if it came to the point where the British industry were really competing internationally with the United States industry, which now has a great preponderance of the world's motion picture business, Mr. Cohen would receive instructions which it would be difficult, if not impossible, for him to disregard and which would not allow of any really serious attempt to permit the exhibition of any British-made product.

Mr. Cohen says that he is glad to play British pictures, provided they are box office attractions. There is a wide difference between this and the " promotion " which is behind some of the United States pictures of equal or less merit than at least some of the British-made pictures. I have little doubt that, if it were possible to engage in any real campaign with a view to extending the showing in Canada of British pictures to the limit, much could be done in that direction which would result in placing before our theatre-going public British manners, British English, and British ideals.

It should perhaps be borne in mind that the British International Pictures are being distributed by Regal Films, and the Gaumont and Gainsborough pictures by Canadian Universal Films Co., Ltd. I can find no evidence that either of these distributors has made any serious effort to promote the exhibition of British pictures, and any utterance in the evidence has been of a more or less disparaging nature.

Miss Joan Arnoldi, the Convenor of the Film Committee of the Imperial Order of the Daughters of the Empire, a sub-committee of the National Executive of that body, who appeared greatly interested in the film question, and particularly in seeing that, at least, British films got a fair chance, states in her evidence on page 5448, that she saw a British picture called " Escape ":

> " which we thought was most excellent; wonderful photography.
>
> " Q. Was that Galsworthy's ' Escape '?—A. Galsworthy's ' Escape ' with Sir Gerald Du Maurier in the leading part, and a wonderfully cast picture. But I have been watching for it ever since and the only place that I have seen it billed at all was in a theatre on Parliament street, which seemed to me a very foolish place to have released a picture of this type. Not at all the right audience."

The receipts from this picture were shown to me, and having regard to the size and location of the Parliament theatre, I should regard them as quite satisfactory. This picture, however, was not shown elsewhere in Canada so far as the records show, and I am forced to the conclusion that it was not given a fair opportunity to make good.

As regards the attitude of the Cooper organization, and Colonel Cooper personally, his natural instincts are undoubtedly strongly Canadian and pro-British, and I believe that if he had a free hand in the matter, his attitude would be in accordance with his convictions. His public utterances, however, have been anything but encouraging to the producers of British-made pictures, and have been criticized in the British press. The attitude of Colonel Cooper and his organization, composed, as it is, entirely of distributors, with the exception of some Famous Players' members, might best be illustrated by a telegram regarding the case of some proposed legislation in British Columbia in 1929. On January 25 that year, Mr. W. R. Marshall, Vice-President of the Film Board of Trade in Vancouver, wired Colonel Cooper:

> "Reliably informed that Government Bill to be introduced immediately present session local legislature in which quota law to be established making it compulsory for exhibitors to play twenty per cent Canadian[*] produced pictures Stop Also provides for strict censorship posters and newspaper advertising Stop Exhibitors lining up to oppose this measure and it is vital that distributors unite to kill the Bill Stop Heavy lobbying will be necessary attain results and start should be made on Monday Stop Exhibitors representative leaving for Victoria Sunday and at special meeting Film Board held to-day it was unanimously resolved that Donnenworth should be instructed to accompany him Stop Adequate financial appropriation from your office urgently required and suggest same be wired immediately Stop"

It has been pointed out to me in a letter received after the closing of the taking of evidence that the Bill providing for the quota was not actually introduced into the Legislature.

On January 25, 1929, Mr. Cooper wires J. R. Muir, who was the District Manager of Famous Players in British Columbia:

> "Film Board wires trouble brewing over quota and censorship wire immediately your confirmation and suggestions."

On January 26, 1929, Colonel Cooper wired Mr. Muir:

> "Understand from Cohen you are going to Victoria to-morrow would appreciate wire Monday night giving name of member who is fathering bill main details of it and whether government is likely to give official approval Stop. . . . If you need Donnenworth[†] on trip take him and we will defray his expenses but prefer leave direction of campaign your hands regards."

On January 26, 1929, Mr. Muir wired Colonel Cooper:

> "Government amending censorship act to give them power to censor all newspaper and billboard advertising and impose British film quota also to force theatres to run ten minutes patriotic film every performance Stop This bill is fathered by Attorney General Pooley am going to do everything possible to have this bill defeated and believe I can bring enough influence to bear to do this. . . . Leaving for Victoria to-morrow night with Holland will wire you from there regards."

From the minutes of the Cooper organization there appears the following (Evidence, p. 4198):

> "Muir is a member of this Association and has always handled political matters in that province. In my judgment it was best to entrust this matter to him rather than the Film Board of Trade."

This appears in a circular to General Managers dated January 29, 1929.

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[*] It appears from Cooper's evidence that the word "Canadian" is a typographical error and should read "British."

[†] Donnenworth was the Secretary of the Film Board of Trade in Vancouver.

On January 29, 1929 Mr. Muir wired Colonel Cooper:

> "Patriotic and British quota features eliminated from bill we think we have censoring of advertising well in hand will report to you further after our next interview with Attorney General to-morrow."

The point is that the Cooper organization was willing to oppose this legislation, which at this time was proposed to contain provisions in regard to British film quota and apparently succeeded in having this eliminated before the bill was introduced into the Legislature. The evidence also established that this lobbying cost Famous Players in the neighbourhood of $5,000, part of which was contributed by the Cooper organization (Evidence, p. 5637), they having paid one-eighth the bill or about $600 "as a matter of courtesy." It should also be noted that Colonel Cooper at the time when he thought that the quota provisions contained in the bill were about to be introduced into the Legislature, authorized Mr. Donnenworth to proceed to Victoria with Mr. Muir to oppose this bill and his expenses were to be borne by the Cooper organization. Note Colonel Cooper's evidence on page 5634 in which he states:

> "Q. Col. Cooper, it is quite obvious, therefore, that your efforts with the government have not always been in favour of British films?—A. If any attorney general in the Dominion of Canada brought in a foolish bill like Mr. Pooley brought in, compelling the theatre owners to use twenty per cent of British pictures even though theatre owners are not members of my organization, I would go out and fight it, because it is one of the silliest proposals I ever heard made in Canada.
>
> "Q. You do not approve of it.—A. No, sir.
>
> "Q. I was not asking you that.—A. But I have told you that, though.
>
> The COMMISSIONER: I suppose that would apply to the British quota law too.
>
> "Q. Would it?—A. A reasonable quota law, nobody could object to, but to ask theatres to put in twenty per cent of British pictures when even the British theatres themselves are only asked to put in the year before last, five per cent, and this year seven and a half per cent, that was a ridiculous bill. Mr. Pooley found that out, and withdrew it."

A further attitude of the Cooper organization toward British films will be gathered from Exhibit 280. which contains a copy of an editorial in the *Financial Post,* Toronto, on May 22, 1930, which was distributed by the Motion Picture Distributors and Exhibitors according to the notation on its face, and which is in part:

> "British films do not come to Canada in large numbers for certain well-defined reasons. The first is that there are few British films of the highest quality. This is the more true now that a rationing plan is in force in Britain that requires distributors there to use a certain minimum number of home-made films. The producers, knowing that this insures them of a market, have let down on quality. The second reason is that the Canadian public has been disappointed so often in the films it has been shown from the Old Land that it refuses a large measure of patronage to any British film."

On May 6, 1930, Colonel Cooper wrote to Mrs. A. F. Rutter, a lady interested in the matter, regarding British pictures:

> "I am sorry to have to spoil this report to some extent by stating quite frankly that we do not have as much success with British pictures as we do with American pictures. The young people do not take the question of origin seriously and when they are looking merely for entertainment they prefer the American picture."

On March 10, 1930, the Motion Picture Distributors and Exhibitors distributed an editorial which appeared in the Montreal *Gazette*, February 17, 1930, entitled "A Films Act Failure," in which the failure of the Cinematograph Films Act of 1927 and the quota feature of it is stated to have failed in its main objects, and further says:

> "the designation 'British' has become almost a term of reproach"

and British pictures are spoken of as inferior. A further mention of this organization appears in an article from the *Morning Post* of London, of February 17, 1930, entitled "American Film Domination," stating that the American film industry has taken a complete stranglehold on English cinemas.

If the Cooper organization desired really to promote the showing of British films in Canada, it is extremely difficult to see why this literature should have been circulated.

At the twelfth Congress of Empire Chambers of Commerce, in the summer of 1930, Mr. W. M. Birks, the Canadian Delegate on the Executive Committee, proposed a resolution as follows:

> "To take steps to foster the growth of the film industry free from foreign dominance, and producing films permeated with the ideals of our own peoples, and calculated to promote British interests."

Colonel Cooper was present and spoke against this resolution.

IX. ACTIVITIES OF MOTION PICTURE DISTRIBUTORS AND EXHIBITORS OF CANADA

1. Organization and Purposes

As at present constituted, the membership of Motion Picture Distributors and Exhibitors of Canada is as follows:

Famous Lasky Film Service Limited, Toronto.
Paramount Publix Corporation, New York.
Canadian Educational Films Limited, Toronto.
First National Distributing Corporation of Canada, Limited, Toronto.
First National Pictures Inc., New York.
Fox Film Corporation Limited, Montreal.
Fox Film Corporation, New York.
Regal Films Limited, Toronto.
Metro-Goldwyn Distributing Corporation, New York.
Warner Brothers Pictures Inc., New York.
Vitagraph Inc., New York.
Vitagraph Limited, Toronto.
Canadian Universal Film Co., Limited, Toronto.
Universal Pictures Corporation, New York.
R.K.O. Distributing Corporation of Canada, Limited, Toronto.
R.K.O. Distributing Corporation, New York.
United Artists Corporation Limited, Toronto.
United Artists Corporation, New York.

The "A" and "D" members are as follows:

"A" Members	"D" Members
Regal Films Limited.	Mr. Henry Nathanson.
Famous Lasky Film Service Ltd.	Mr. M. A. Milligan.
Canadian Universal Film Co. Ltd.	Mr. C. Hague.
Canadian Educational Films Ltd.	Mr. James Travis.
First National Distributing Corporation of Canada, Ltd.	Mr. R. S. Bell.
Vitagraph Limited.	Mr. B. F. Lyon
R.K.O. Distributing Corporation of Canada, Limited.	Mr. P. C. Taylor.
United Artists Corporation Ltd.	Mr. H. M. Masters.

It will be observed that Columbia Pictures of Canada Limited and Tiffany Productions of Canada Limited are not members. Reference will be hereafter made to certain matters that are referred to general managers, and the distinction is sometimes made between matters dealt with by the Association and those dealt with by the General Managers. The only reason that I have been able to discover is that these two distributor companies are not actually members, and in matters referred to general managers their concurrence is required. These two distributors are, however, members of the Film Boards of Trade and represented in that body.

The Exhibitors or "B" and "E" members are composed of nine "E" members representing Famous Players, three representing Paramount Theatres Limited, and one each representing Strand Hamilton Theatres Limited, Allen's St. Catharines Theatre Limited, Oakwood Amusement Company Limited, Paramount Brantford Theatres Limited, Hamilton United Theatres Limited, and Paramount Peterboro Theatres Limited, all Famous Players subsidiaries, excepting Hamilton United Theatres, with which Famous Players has a pooling agreement.

The evidence, without going into particulars, clearly discloses that the Cooper Organization is a mere offshoot of a corresponding organization in United States, presided over by Mr. Will Hays and referred to as the "Hays Organization"; the policies being dictated by, the finances controlled by, budgets subject to the approval of, and the activities generally subject to the control and direction of the Hays Organization. The minutes are submitted to New York, and also the proceedings of the Film Boards of Trade, and the New York office is consulted, not only on important matters such as censorship in Canada and amusement tax, but also on matters which might be considered almost routine.

From the constitution of this body, it is quite clear that it is a combination of producers, distributors and Famous Players, and, it being quite as true to-day as when first uttered that "Where your treasure is, there will your heart be also," and, it being the case that, with the exception of $480 contributed by Famous Players and their affiliations above named, and except relatively small fees paid by Canadian distributing companies, the revenue is directly or indirectly supplied by the producer members and collected in New York, it is obvious that the interest of this association and its officers is entirely that of the distributors, and, through them, of the producers. Famous Players, through its financial support, through its membership and through the activities of its officers, has been a part and parcel of the Cooper Organization from the beginning, and completely identified with its activities.

During its existence the Cooper Organization has dealt with such matters as censorship, amusement tax, fire hazard in theatres as well as in the exchange buildings, and other matters which might be said to be of interest and benefit to the theatre operators or proprietors. Colonel Cooper (Evidence, p. 3795), in dealing with amusement taxes, gives the following evidence:

> "Q. I suppose the efforts to decrease the amusement taxes were wholly on behalf of the theatre owners?—A. You assume that?
>
> "Q. I was asking a question. My inflection implied a question, I thought.—A. I would not say that. Anything which prospers the theatre owners naturally improves the business of the people who are selling to them.
>
> "Q. I suppose if the theatre owner pays less taxes he might possibly be able to pay more for his films.—A. Quite possibly."

I find that any benefits to the independent theatre operator, resulting from any activities of the Cooper Organization, were quite incidental to the benefits which the distributors, producers and Famous Players expected through those activities.

The Cooper Organization started functioning about January 1, 1925. Previously to that Colonel Cooper had been the secretary of an organization engaged in activities similar to those afterwards assumed and performed by Motion Picture Distributors and Exhibitors of Canada upon its organization in Canada.

The minute book of the older association discloses that they were active in relation to opposing booking by agents for a number of theatres, called "booking combinations" or "collective bargaining" for the leasing of films by exhibitors; in enforcing the rules requiring cash in advance on C.O.D. shipments from independent treatre owners; in promoting arrangements between distributors and exhibitors, called "Protecting the Contract", whereby the other distributors would agree not to sell to an exhibitor who had made default with another distributor; in attempting to enforce the use by the distributors of a standard exhibition contract; in establishing uniform prices of accessories, refusing to deal with Motion Picture Theatre Owners Association in fixing minimum film rentals; in opposing the use by more than one theatre owner of the posters and advertising accessories sold with the pictures, and such like.

The first meeting of the provisional directors of the new organization was held on November 17, 1924, the provisional directors being Mr. Arthur Cohen, Colonel Cooper, and three representatives of distributors. The assessments were fixed temporarily at the meeting, and on December 8, 1924, the Motion Picture Producers and Distributors of America, Inc., were appointed agents for this association to collect, receive and receipt for, the dues or fees of all members of the Canadian association who being individuals reside in the City of New York or being corporations have their head offices in the said City of New York.

2. Activities in 1925

From the minutes of January 9, 1925, it appears that Mr. Courtland Smith of the American association, the Hays Organization, had agreed that the expenses for November and December should be borne by the old Canadian association (it does not appear what Mr. Courtland Smith had to do with it) and the cost of organization expenses for the new association, and that the Hays Organization had loaned $2,500 to start the new Canadian association.

On February 19, 1925, a resolution was passed

> "That no distributor of films who was a member of this Association shall enter into any contract for the supply of films except with a theatre owner holding a licence issued by competent legal authority after production of satisfactory evidence as to the ownership of the theatre, and that no such member shall enter into any such contract with any agent or agents of any booking combination."

This resolution was passed unanimously by Class E members. At the same meeting it was reported that the rule in regard to paying cash for paper and accessories should come into force on March 1, 1925.

United Artists submitted a case of Mr. Leon Mercier of the Electro Theatre, Montreal, who had taken action against this exchange on account of damaged film supposed to have been supplied to him. Mr. Berman (of United Artists) was advised to submit his case to his solicitors in Toronto, and have them send it to their representatives in Montreal to be taken care of, and if he needed any further help in connection with the case, the association would request Mr. Mailhuot's advice in connection with it. Mr. Mailhuot was a solicitor in Montreal retained by the Cooper Organization.

At the meeting of March 12, 1925, the organization of the Film Boards of Trade in Toronto and Montreal was taken up, and the Toronto members supplied with copies of the constitution and by-laws of the Chicago Film Board of Trade, and also with a printed copy of the rules with regard to arbitration as issued by the Hays Organization. Certain action through New York was suggested in regard to reduction of amusement taxes in Ontario.

At the meeting of March 26 it is noted that Mr. Pettijohn (of the Hays Organization) wrote under date of March 20 that it would be necessary for all Canadian exchanges to insert the arbitration clause in their contracts, to enable the Film Boards of Trade to function properly in regard to arbitration. The situation in Calgary was discussed. The Minute is:

> "On December 6 last a meeting of the Calgary Film Board was held, and the situation re Wetaskiwin discussed. A committee was formed consisting of Messrs. Cass, Davey and Kelly, to draw up a schedule for this theatre which was badly oversold. Apparently this committee did its work, and the exhibitor complied with their wishes for the space of nearly two months. Then he (Mr. Dunphy), owner of the theatre, sold out to a new company and reduced himself to the position of operator in the theatre. The representatives of two exchanges grasped the opportunity of making new contracts with the new company, and these were Universal and Fox. This action on the part of these rep-

> resentatives was resented by the other members of the Association who believed that the agreement reached on December 6th should stand (That agreement was with reference to protection of contracts by which, under these circumstances, other distributors would not sell a theatre owner for a certain period). The General Managers of Fox and Universal were notified of the situation and they have received explanations from their Calgary representatives. A discussion occurred as to whether the formation of the new company in Wetaskiwin justified these representatives in considering that the agreement approved by all on December 6th was cancelled. It was decided that unless there was evidence that the sale of the Wetaskiwin Theatre was bona fide that the agreement of December 6th should still hold good, and that Fox and Universal should cancel their new contracts."

The minute continues:

> "Another case has come up in Calgary, which involves nearly the same principle. At a meeting of the Calgary Branch on March 16, First National complained that Mr. Free of Stettler intended to refuse a shipment because they were charging him cash in advance for accessories. It was decided to protect First National in the matter of the shipments of March 20th and 21st, and accordingly a telegram was sent to Mr. Free, dated March 16th, notifying him that he must accept the shipments from First National for the 20th and 21st. Mr. Free then asked Universal to ship him a picture on a contract which he had with that company and Mr. Dippie, Universal's representative, decided that it was best to do so. Mr. Hague is in possession of his reasons for taking this action. Universal actually supplied the picture, and First National did not get a showing on March 20th and 21st.
>
> "After discussion, it was decided that all general managers should write to their branch managers and insist that there must be co-operation in various centres, either through branch associations or through film boards of trade. In other words, in this particular case, it was up to Mr. Dippie to conform to the judgment of the majority of the managers at Calgary, and not to have taken upon himself to decide according to what he thought best."

At the same meeting, in regard to cash in advance, there is the following minute:

> "Telegrams were read from two exchange managers in Vancouver, stating that the exhibitors in that Province were fighting hard against the cash in advance for accessories. It was decided to stand firm on the rule and to insist that every manager there should insist on the same practice as in the other provinces."

On April 8, 1925, there is the following minute:

> "The recent memorandum sent out to all members with regard to the advisability of inserting an arbitration clause in all contracts was discussed at some length. Mr. Morgan explained the benefits of it according to his experience with Film Boards in the U.S. It was pointed out that up to the present time there had been no demand for arbitration from the Canadian Exhibitors. It was finally decided to report to Mr. Hays that the feeling of the General Managers in Canada was in favour of the insertion of the Arbitration Clause (Nineteenth) in all contracts; but that before coming to a final decision they would be glad to have his advice in the matter."

At this meeting applications for Class B and Class E Membership were approved.

A further minute:

> "It was reported that one Exhibitor in the City of Montreal had adopted a rubber stamp and had marked each one of his contracts to the effect that the CONTRACT WAS VOID IF PICTURE WAS CUT BY THE QUEBEC CENSORS. It was decided not to accept any contract where the Exhibitor insisted on inserting any such condition. It was also agreed that a copy of this stamp and notification to this effect should be sent to all General Managers with a request that they shall notify their Montreal managers particularly of this decision."

In the minutes of a meeting on May 1, 1925:

> "*Arbitration:* The question of adopting immediately the Arbitration Clause of the Uniform Contract used in the U.S., was discussed at some length. The only Company which has this clause at the present time is Universal. It was

> decided that the other companies should be advised to adopt this clause immediately, either by using a new contract or adding the same clause as is used by Universal to their contracts by the use of a rubber stamp. Mr. Cooper undertook to draft a Uniform Contract based on existing contracts and submit it at an early date."

There is also a note that the Budget for the year amounting to $13,405 had been approved by Mr. C. Smith (of New York).

> "It was decided that no exceptions should be made in cash in advance rule which would allow mounted paper to be shipped out without cash being received before shipment. Each General Manager present announced his intention of notifying his branch managers to maintain the general rule cash in advance without any exceptions whatsoever. Each General Manager also agreed not to make any change in rules and regulations with respect to paper and accessories without giving other General Managers sufficient notice in writing either direct or through the association."

At a meeting on May 28, the question of Uniform Contracts was again discussed and a committee was appointed, composed of Messrs. Bache, Cohen and Cooper to compile a Uniform Contract suitable for Canada, and as closely approaching the Standard Contract used in the U.S. as may be possible. At a meeting on July 21, the question of the arbitration clause was discussed and the minute is in part:

> "is now in the contracts being used by Fox, Regal, Universal and Warner Bros."

At a meeting on October 14, 1925, a letter from the Montreal Film Boards of Trade stating that a circular letter had been sent to all exhibitors in the Province of Quebec:

> "Saying that the C.O.D. rule on film and accessories would be strictly enforced on and after October 15."
>
> "Letters were presented from one Exchange in Montreal and the Manitoba's Exhibitors Association requesting that the Exchanges resort to the old rule and buy back used paper and photographs. The matter was discussed and it was unanimously agreed that it would be unwise to make any exceptions to the present rules. All the Managers reported that the present practices were satisfactory to them and they were prepared to maintain them."

Mr. James P. O'Loghlin was elected a Class "D" Director in place of Mr. Ira Cohen resigned.

On November 17, 1925, there are the following minutes:

> "After consideration the Directors decided that it might be wise to inform the Branch Managers that this Association was opposed to any admission prices less than 15 cents for adults and 10 cents for children and advising the Branch Managers to do everything within their power to educate the exhibitor to maintaining these minimum prices."

In a circular (Evidence, p. 3738) to General Managers, Col. Cooper says that he telephoned Mr. C. Smith of New York and asked him if there was any precedent for action by this association on such a matter. He stated that the Hays' Organization had found it advisable not to make any regulations with regard to prices. He also states that this might be considered an infringement of the United States federal law. He also stated that:

> "The laws against restraints of combines and restraint of trade in Canada are less stringent than in the United States but this point does not seem to arise in this case, because the arrangement would be only for the City of Toronto. It would seem therefore that there is no legal objection to concerted action on the part of Exchanges to assist Exhibitors in maintaining the 15 cent price."

He continues:

> "Clause 15 of the standard contract reads as follows:
>
> "The Exhibitor shall charge an actual minimum admission fee of......at such theatres on the dates when said photoplays shall be exhibited thereat."
>
> "I would therefore suggest that instructions be issued to all exchanges that no contracts should be accepted with this space left blank and that no contract should be accepted which provides for a lower admission fee than 15 cents for adults and 10 cents for children."

The question of double bills was also considered at this meeting and the minute says that the subject had been taken up with the Hays office and that Mr. Pettijohn had written saying that double bills should be discouraged. There is the following minute:

> "Where it was possible without doing injury or injustice to the industry double bills should be discouraged."

On December 18, 1925, there appear the following:

> "*Autonomy of Film Boards of Trade.*—The President submitted to the Directors the question as to whether the Film Boards of Trade shall be autonomous in matters other than arbitration. After considerable discussion it was decided that the Film Boards should be notified that their autonomous powers extended only to arbitration and that on other matters they should feel free to make recommendations to this Association before putting in new plans regarding business rules into force."
>
> "*New Film Boards.*—After discussion it was decided that Film Boards should be formed in St. John, Winnipeg and Vancouver, but that these boards should be instructed that their expenses for a Secretary should not exceed $15 a week."

From the annual report, dated March 30, 1926, the following extracts are interesting:

> "*Standard Rules of New Association.*—The first business of the new Association was to submit the rules of the old Association to the Hays organization for their approval. This was done early in January and on January 23, 1925, a circular was issued to the members (No. 3) which covered the question of C.O.D's, play dates, circuit bookings and the handling of paper and accessories. These rules may be summarized as follows:—
>
> (*a*) *C.O.D's.*—All films should be paid for in advance according to the terms of the Standard Contract which require payments to be in the office at least three days in advance of the shipment, otherwise all films must be shipped C.O.D.
>
> (*b*) *Play Dates.*—14 days notice must be given by exhibitors desiring a change in play dates. If the film is not played on the dates arranged for the exhibitor must pay. The full statement of our rules in regard to this matter was issued to all Canadian Exhibitors in a circular dated January 20, 1925, a copy of which is attached.
>
> *Circuit Bookings.*—A separate contract must be taken for each theatre even where two or three theatres may be owned by the same person or Company.
>
> *Cash for Paper and Accessories.*—All paper and accessories sold over the counter must be paid for in cash. Any paper and accessories shipped must be paid for in advance except, that small shipments of $1 or under may be sent open.
>
> *Exhibitors.*—The chief difference in the Constitution of this Association and the Hays organization is the inclusion of exhibitor members. It was felt that it might be wise to try the experiment of having exhibitor members in Canada, and have this Association act on behalf of both distributors and exhibitors..... The work on behalf of exhibitors was probably about forty per cent of the work done during the year. When it is considered that over ninety per cent of our fees come through the producers and distributors it might seem that too much attention has been given to this work. This is a matter of policy of which the directors will be responsible from time to time."

In view of certain of my findings above, this does not appear to be a very frank statement of the situation. The above was called to the attention of Col. Cooper, who was asked (Evidence, p. 3713):

> "Q. And what did it consist of?—A. Well, I couldn't tell you just at the moment, except just to go through the minutes.
>
> "Q. I have gone through them and I can't see anything you have done for them.—A. Well——
>
> "Q. Unless compelling them to pay C.O.D. for their pictures was one thing.
>
> "Q. Is there anything further you want to say on that?—**A. No."**

Vitagraph resigned from separate membership owing to its amalgamation with Warner Bros., but the name is still retained in the nominal list of " A " membership.

> "*Film Boards of Trade.*—Perhaps the most important development of our work during the past year has been the formation of the Film Boards of Trade. On the occasion of the visit of Mr. Pettijohn to Toronto and Montreal of May of last year, it was decided to form Film Boards through Canada in place of the Branch Managers' Association which then existed. . . . Permanent paid secretaries are employed in each case and copies of the minutes of every meeting of the Film Boards, Credit Committees and Arbitration Boards is forwarded to this office where these reports are inspected and filed. Where there are any doubts as to the propriety of any action on the part of the Film Boards these doubts are submitted to Mr. Pettijohn in New York for his advice or decision. We owe a deep debt of gratitude to Mr. Pettijohn in this connection."

On page 3745 of the evidence there is quoted from a circular to General Managers this:

> ". . . . The number of adjustments made by mutual agreement was greatly increased because of the possibility of arbitration."
>
> "*New Standard Exhibition Contract.*—The Canadian contract is now ready for printing and your directors recommend that this contract come into force throughout Canada on May 1, 1926. It is proposed to print extra copies of the contract for use of the smaller companies in Canada whose representatives are members of the Film Boards. In this way it is hoped that every distributor in Canada will have formally adopted the standard contract and the arbitration clause on that date."
>
> "*Censor Boards.*—The main work of this Association on behalf of its distributor members must always be the question of our relations with the eight provincial Censor Boards.
>
> "In another respect the question of censorship has been advanced considerably, and that is in the education of public opinion against censorship generally. Our relations with the Social Service Council of Ontario, the National Council of Women and other similar organizations have improved to such an extent that they believe that censorship in Canada has gone to extremes, so far as motion pictures are concerned. They are not quite prepared to vote censorship out of existence altogether, but they are almost ready to accept some compromise with the present system."

The auditor's report for 51 weeks in 1925, which is an appendix to the annual report, shows receipts of which Toronto contributed $3,188.80; New York $13,380.45; held in New York $2,604.99; Miscellaneous Income $6.25, making a total of $19,180.49. The New York fees are paid by Educational Films, Famous-Players Lasky, First National, Fox Films Inc., Producers' Distributing Corporation, Universal Films, Warner Bros., and Vitagraph Inc. The distributors' fees payable in New York are by Metro-Goldwyn, Producers' Distributing Corp., and Warner Bros.; and the exhibitors' fees, 20 members at $24 per annum, $480, all paid by Famous Players and their affiliations.

Circular No. 3 to General Managers, dated January 23, 1925, is in part as follows:

> "*C.O.D.'s.*—The rule adopted by our old association in regard to this matter is regarded as being within the province of the new association, because it is merely a restatement of the terms of all Exhibitors' contracts, and is merely insisting that Exhibitors comply with their contracts."

On February 2, 1925, Circular No. 4 was sent to General Managers, and is in part as follows:

> "I beg to inform you that a letter has been received from Mr. Gabriel Hess, General Attorney of the Hays organization, approving of the circular letter to all Branch Managers in connection with CASH IN ADVANCE for advertising accessories. This clears up any doubt that may have been in our minds as to whether or not the Hays organization approve of practices of this kind.
>
> "They have now approved of our C.O.D. rules, play date rules, circuit booking rules, and cash in advance for accessories.
>
> "They have not approved of our publishing uniform prices on accessories, although it would seem that their objection to that circular is not very strong."

Circular No. 9, dated March 9, 1925, to General Managers, is interesting as showing the methods adopted by the Cooper Organization when dealing with certain public organizations:

> "For some time past I have been in contact with the activities of the National Council of Women, which has branches in almost every city and town in Canada. There are provincial and local councils, Mrs. Wood, Chairman of the Motion Picture Committee for the National body, is resident in Toronto, and she gets reports from provincial bodies and also from some of the local bodies. She brings these reports to me and I go over them with her. In this way I have been able to explain away most of the complaints which she receives.
>
> "At the present time she is getting reports from all provinces for the annual meeting, and all these will be submitted to me before they are used. My object in this will be clear to you. If we can keep these complaints coming in to Mrs. Wood and from her into this office, we will avoid publicity.
>
> "We are also able through Mrs. Wood to distribute information to the women which will put them in a better frame of mind. For example: yesterday at a conference in this office, Mrs. Wood brought in a Mrs. F. W. Johnson, who is President of the Toronto Liberal Women's Association, and also a member of the Ontario executive. She was greatly interested in hearing about the Hays organization and the work it is trying to do, and went away with a new point of view of what the motion picture industry is trying to do to keep itself clear of criticism.
>
> "I am sending you this merely for your information purposes, and not because it requires any action on your part. What I have said applies not only to women's councils, but also to the social service organizations."

3. Activities in 1926

The Annual Report for the year ending December 31, 1926, contains the following:

> "*Standard Exhibition Contract.*—After prolonged discussion, the Standard Contract was adopted for Canada and officially put in force on July 1st, 1926. This brought arbitration into force under all Canadian contracts for the first time. Before that date there had been a somewhat chaotic aspect to the contract situation and a lack of uniformity in sales regulations. The results obtained in the last six months justified the long struggle to bring all the distributing companies into line in this respect."
>
> "*Film Boards of Trade.*—During the year 1926 Film Boards got their first real trial in Canada. Continuous and sympathetic assistance was rendered by Mr. Pettijohn and Mr. Hess of the New York office and arbitration began to work fairly well. The indirect results were probably more important than the direct results. Branch managers and salesmen found it necessary to check overselling and to pay more attention to such details as proper signatures, play dates, availability notices and so on. The number of adjustments made by mutual agreement was greatly increased because of the possibility of arbitration."

The results of the settlement of claims by arbitration is given in the report. In relation to the Hays organization:

> "In the matter of finances, fire prevention and regulation of the Film Boards of Trade, all the work has been carried on in close cooperation with the officials of the Hays organization. No regulation has been adopted affecting these matters, without first consulting with the official in charge of the particular department in the senior organization."

The following are extracts from the minutes of meetings held on the dates as hereunder:

January 8, 1926:

> "*Credit Committees.*— . . . it was decided that such Credit Committees were not advisable or necessary."

March 5, 1926:

> "*Film Boards of Trade.*— . . . It was decided that copies of the minutes of the various Film Boards should be forwarded to Mr. Pettijohn's office for his information when and as received."
>
> "*New Standard Contract.*—The new standard contract was considered and its adoption was recommended."

March 30, 1926:

> "*Zoning—Montreal.*—The report of the Zoning Committee in Montreal was submitted for approval and copies ordered to be sent to all General Managers."
>
> "*Standard Contract.*—A copy of the Standard Contract as revised and approved by the Hays organization, was submitted with the suggestion that this should come into force in Canada on May 1st, 1926."

Enforcement of contracts.—The question as to how far the Film Boards of Trade should be expected to enforce contracts was taken up and discussed.

The report on Standard Contracts was received, as to what companies were using them.

June 1, 1926:

> "*Standard Contract.*—The question of a date for bringing into force of the 'Standard Exhibition Contract' was considered. It was decided that all Companies should be advised that the contract would come into force on July 1st and that every Company should make an effort to have the new blank forms in the hands of all salesmen by that date."

The question of cash deposits under the Arbitration Clause was considered.

On June 10, 1926, the President was requested to see all exchanges and have them sign an agreement to adopt a clause in the new feature contracts, by which the exhibitor will agree not to exhibit or permit the exhibition of more than one feature photoplay on the day or dates each of the feature photoplays mentioned in the contract is exhibited.

On June 28, 1926 the question of DOUBLE BILLS was again discussed. A circular had been sent out on June 25 by the secretary of the Toronto Film Board of Trade to all members of the Film Board suggesting that all future contracts be not taken where double bills are involved.

On July 6, 1926, the matter of double bills was further considered:

> " Six companies announced that they had decided not to take any more contracts for double showings.
>
> " *New Standard Contract.*—All exchanges are now using the New Standard Contract, except that Educational and Independent are using a rubber stamp on their contracts... The President was requested to communicate this information to Mr. Pettijohn and other members of the Hays Organization."

August 19, 1926:

> " *Oversold Accounts, Winnipeg.*—The question of dealing with the list of oversold accounts as submitted by the Winnipeg Film Board and considered at the special meeting of the Directors on August 10th, was again discussed. Details of these twenty-four accounts were laid on the table and considered. It was evident from an examination of this list that the number of pictures given in some cases did not correspond with the information of the members present. It was therefore decided that a copy of this list should be sent to each General Manager and that he be given time to check up the list so as to ascertain its correctness. It was also decided to call another meeting of the Directors at an early date to consider this list as soon as the work of revision had been completed."
>
> " *Instructions to Film Boards.*—The President suggested that instructions should be sent to the Film Boards on two points.
>
> " (*a*) That in future no member is to be suspended or expelled from a Film Board until his case shall first have been referred to this Association for consideration.
>
> " (*b*) That no General Manager, District Manager, or any other official of the motion picture business, shall attend any Film Board meeting except at the invitation of the President of the particular Board concerned. If such an official is present or if a visiting member of the Film Board is present, he will have no right to take part in the discussions. It will be quite in order, however, for the President to ask him to speak on any subject under consideration.
>
> " After discussion these recommendations were approved."

On August 31, 1926:

> " *Oversold Accounts in Winnipeg.*—The list of oversold accounts was again presented for consideration and it was agreed that the request of the Winnipeg Film Board not to sell these accounts for twelve months should be approved. It was

> generally understood that this action was not agreed to by United Artists, Educational, Independent and Vital... It was distinctly understood and provided, that where a Company is unable to supply a picture which is on contract, the Company may substitute a newer picture of the same class and price."

On September 29, 1926:

> "*Enforcement of Contracts.*—The letter from Mr. Gabriel Hess dated March 4, 1926 and relating to enforcement of contracts in the case of a transfer of theatre from one owner or lessee to another, was again discussed. Copy of circular sent out by all the Film Boards in Canada to exhibitors was also considered. It was pointed out that in connection with these documents where the sale of a theatre is bona fide and the new owner is worthy of credit, all exchanges having contracts against the old owner must sue on these contracts if the new owner does not volunteer to take them over. After a full discussion on this point it was decided that each General Manager should endeavour to find a case where he could enter an action against an old owner on such contracts."
>
> "*Availability.*—Samples of the form used by Warner Bros, and F.B.O., were submitted for the information of the members present. It was pointed out that proper notice of availability would make the task of the Film Boards much easier in any cases of arbitration."

At a meeting on November 22, 1926:

> "*Arbitration.*—The President submitted a general report on arbitration which is attached to the Minutes as an appendix, and an interesting discussion followed. Mr. Cohen suggested that all decisions should be reviewed in this office and these should be approved or disapproved. If necessary the President should take advice from New York but he felt it inadvisable to quote the New York opinion to the Film Boards themselves.
>
> "The President was authorized to make a reply to the Toronto Film Board in the case of Fox vs. Bijou Theatre, Cobalt, taking the ground that no Arbitration Board has the right to consider more than one contract at one time."

The above report was considered and after citing some examples of arbitration, he says, in respect of one:

> "This case is now being reviewed and it will probably be submitted to Mr. Gabriel Hess for his opinion."

Further on the report says "the question therefore arose as to whether it is allowable for an exchange to make a separate legal agreement and thus avoid bringing their contract under arbitration."

> "It is suggested that the General Managers should review each decision made by a Board of Arbitration in which their companies are involved and report to this office if there is any point on which they think the Board has not acted in accordance with the rules and the facts."

On December 9, 1926:

> "*Montreal Film Board Arbitrations.*—After discussion it was duly moved, seconded and carried that the Montreal Film Board should be notified that hereafter all contracts taken in Montreal and subject to the zoning arrangement must be endorsed to that effect. . . . With regard to contracts which have been taken up to date the interpretation of these in connection with the zoning system shall be left in the hands of the Montreal Film Board who shall issue such instructions to their representatives on the Arbitration Board as they may deem in the best interests of all concerned. The question of direct correspondence between the Montreal Film Board and the office of the Film Boards in the United States was discussed. It was decided that the Montreal Film Board should be instructed to direct all their correspondence through this office."

The budgets from Winnipeg and Toronto Film Boards were submitted for approval and passed as submitted, and specified fees authorized to be collected from each of the local exchanges.

On December 21, 1926, the budget of the Montreal Film Board was considered too high and the Board was directed that the lease of the present office should be cancelled and that the Montreal Film Board should be written to this effect. The budget of the St. John Film Board was also considered and reduced.

At this meeting revised rules for arbitration were adopted and instructions are to be issued to the six Film Boards to bring these into force from January 1, 1927.

The Financial Statement for the year ending January 1, 1927, shows a revenue of $20,003.17, $16,606.49 of which was either received from or retained in New York.

From a memorandum dated January 12, 1926, for the General Managers in regard to c.o.d's in British Columbia, it is evident that a close check is being kept on the exchanges to see if they are carrying out the rule in regard to c.o.d. shipments.

On January 13, a memorandum for General Managers was sent out in regard to mounted paper in Winnipeg, containing the following:

> "The only question I can make is that each General Manager should write to his Branch Manager in Winnipeg and suggest that the newly formed Film Board of Trade should discuss the question of mounted paper at its next meeting and reach a decision which all are prepared to support. They all know that there is a general rule against mounted paper throughout Canada, but if they will all put themselves on record as guaranteeing to enforce this policy without evasion or mental reservation the desired result can be accomplished."

On January 14, 1926, a memorandum to General Managers on the same subject contains this statement:

> "It is gratifying to find that so many of the exchanges are prepared to co-operate 100 per cent in the matter of handling paper and advertising material. May I suggest that if at any time any exception to the usual practice comes to the notice of any General Manager that he will be good enough to notify this office immediately."

On January 29, a memorandum to General Managers contains this statement:

> "*Re Mounted Paper.* . . . . There are still some variations in price. Some of the Exchanges are selling paper for fifteen cents. We have reason to believe that Warner Bros. will increase their price in Ontario about March 1, but this is not yet official. This matter of price is not one on which it is desirable that the Association should lay down a rule; therefore it will be the privilege of the general managers individually to talk with those managers who have the lower price and try to convince them that they should conform to the general practice."

On February 2, a memorandum to General Managers states in part:

> "In accordance with the wishes of the New York organization and in pursuance of a resolution passed by this Association, we have completed the formation of the six Film Boards of Trade in Canada. . . . . It might be well to adopt the rule that no fees should be paid to any Film Board after March 1, unless its budget has been approved by this Association."

On February 5, 1926, a memorandum for General Managers in reference to Credit Committees is in part as follows:

> "The Montreal Film Board has established a Credit Committee following the lines of similar committees in the United States. The idea apparently is that if a man is over-sold or has failed to remit his percentage, or has done something else which puts him in wrong with any Exchange. . . . . Similarly if it is reported to the Film Board that any Exhibitor is about to sell his theatre to some new proprietor or lessee, the Credit Committee gets active in trying to ensure that the new proprietor will take over the contracts of the old proprietor. You will recall instances, notably one in Wetaskawin last year where a man sold his theatre after being ordered by the Film Board of Trade in Calgary to play certain contracts alternately. As soon as the new proprietor got the theatre other Exchanges rushed in and took new contracts, thus excluding the Exchanges who had previously held contracts and had been given play dates by an arbitration committee.
>
> "Apparently this Credit Committee is intended to deal with such cases as this and to prevent injustice being done to Exchanges who have taken contracts in good faith and who may be faced with loss of business by real or spurious transfer of licence. . . . . Where a proprietor is not doing what he ought to do, he is placed on what they call the 'credit list' and no member of any Exchange will sell him so long as his name remains on this list. It is rather strong handed action, but apparently is approved by Mr. Pettijohn and by the practices of the Film Boards of Trade in the United States."

On March 9, 1926, a memorandum to General Managers encloses a copy of the minutes of a special meeting of the Montreal Film Board of Trade held on March 6, 1926, which contains the following minute:

> "Considerable discussion occurred regarding the zoning of theatres in the City of Montreal and it was moved by Mr. Osborn and seconded by Mr. Wells that the first, second and third groups as listed on report by Mr. Davis' Zoning Committee be adopted. It was also moved and seconded and carried that the group numbered 4 in the Committee's report be divided and the separate divisions be numbered 4, 5, 6, 7, and 8. The executive secretary was instructed to send revised list of zoning with an additional clause which was already agreed upon, to each Exchange Manager. This new ruling is to go into effect March 10."

On March 10, 1926, a memorandum for General Managers, in regard to the New Standard Contract, states that a deputation from the motion picture theatre owners consisting of Messrs. Brady, O'Connor and Sternberg called on Colonel Cooper and wanted to discuss the question of the Standard Contract and is in part as follows:

> "They seemed to regard it with a good deal of suspicion, and I think our conversation removed most of that. They had a great many objections to it."

These objections were finally reduced to four in number:

> "I. Clause four. They object to the payment three days in advance. This clause is not new.
>
> II. Clause fourteen. They object to the provision requiring them to buy all advertising accessories from Exchanges and not being able to resell it. They pointed out that the 'theatre chains' are able to pass their advertising on from one theatre to the other, and they claimed the independent exhibitors should have the same privilege.
>
> III. Clause sixteen. They asked that this clause be eliminated as being of no effect in Canada. I pointed out in this connection that there was a possibility of some province imposing a tax of $5 or $10 per reel on all films sold in the Province, as in the case of Connecticut.
>
> IV. Clause twenty-two. You will recall that we arranged that the number of days in which contract could be accepted in Ontario was placed at 30 days. They would like this reduced to 15 days."

The memorandum continues:

> "I would suggest that there be an informal meeting of the General Managers at this office at 12.00 noon Friday to consider these points. If you are unable to attend please let us have your written opinion."

There is nothing to indicate as to whether this meeting took place.

None of these suggestions were acceded to. At the meeting of March 5, 1926, it was decided that this contract should become effective in Canada on May 1, 1926.

On March 20, 1926, memorandum No. 26 to General Managers is in part as follows:

> "You will note in the new Standard Exhibition Contract that in clause 14 the Exhibitor is not to advertise any film until after the completion of the first run by any other Exhibitor. Apparently this clause is not in the old 'Uniform Exhibition Contract'.
>
> "The Regal Films are safeguarded in this respect in their present contract. . . .
>
> "No doubt each General Manager has some way of protecting his first runs, and I will be glad if each General Manager will write or telephone me as to what safeguards he usually takes."

On April 6, 1926, memorandum No. 32 is in part as follows:

> "We are informed by Mr. Gabriel Hess that on April 2nd a circular letter was sent to the head offices of the following members notifying them that the new Standard Exhibition Contract would be adopted for use in Canada on and after May 1st and enumerating the necessary changes:
>
> First National Pictures Inc.
> Educational Film Exchanges Inc.
> Famous Players Lasky Corpn.
> Fox Film Corporation

> Metro Goldwyn Dist. Corpn.
> Universal Pictures Corporation
> Producers Distributing Corporation
> Warner Brothers Pictures
> Film Booking Offices
> Pathé Exchanges, Inc.
> United Artists Corporation
> Associated Exhibitors Assn.
> Regional Distributors Assn."

On May 20, 1926, memorandum No. 37 is in part as follows:

> "As we have had no criticism from any General Manager of the Zoning System in Montreal, this office is assuming that it has been generally approved."

On July 27, 1926, memorandum No. 48 in regard to c.o.d's for accessories is in part as follows:

> "It is gratifying to be able to say that Mr. Bach has compiled his survey and that he reports that the rule is in full force in the West."

On September 17, 1926, memorandum No. 58 to General Managers re availability, is in part as follows:

> "Clause Ninth of the Standard Contract provides that the Exchange must give fifteen days notice to the exhibitor of the availability of pictures. If this notice is not properly given it will be difficult for the Exchange to bring a man to arbitration for failure to give dates and thus fulfil his contract. . . . . If you have a form dealing with this subject would you be good enough to mail us a copy of it for our file."

On November 24, 1926, memorandum No. 80 to General Managers is as follows:

> "This is to remind you that at an unofficial meeting of the General Managers it was agreed by all those present that there should be a minimum charge on trailers to theatres as follows:
>
> In towns under 5,000 — .50c.
> In towns over 5,000 — 1.00
>
> "If you are not agreeable to this arrangement please notify this office at your convenience and we will take the burden of notifying the heads of the other Exchanges.
>
> "You understand, of course, that this is not a decision of our Association, but a decision of the General Managers in which we are naturally interested."

4. Activities in 1927

The Annual Report for the year ending December 31, 1927, makes certain claims and is couched in language which it is difficult for me to understand and with this comment I pass it over.

The following are extracts from the Minutes for the year 1927 on their respective dates:

January 5, 1927:

> "In addition to this they should be instructed that if they have any doubt as to the good intention of the Exhibitor he should be placed on the Deposit List. This, however, should not be done until after a clear judgment has been given against him and after the most careful consideration as to what is the best plan to pursue to prevent infractions of this kind 'under the rules of the Credit Committee' but individual Exchanges would have the right to demand a deposit and in that case they should receive personal assurance from their competitors that they will not take advantage of the situation."

February 9, 1927:

> "*Calgary Arbitrations.*—Two decisions rendered by the Joint Board of Arbitration, Calgary, were considered, and the whole question of Appeals from Arbitration Boards was discussed at some length... It was the general feeling of the meeting that the cause for failure in most cases brought before the Arbitration Board was the fact that the statement of claim by the Exchange was not properly drawn. It was also felt that wherever possible a young lawyer should be employed as executive-secretary of the Film Boards, as this method had been found successful in Vancouver."

An appeal to the Board which made the award is provided for by a resolution passed at this meeting.

March 16, 1927:

> "*Lifting C.O.D.'s.*—The rules with regard to the lifting of C.O.D.'s were again discussed and the former practices of refusing to lift these was confirmed. The Directors thought a letter should be sent out by all General Managers to their Branch Managers notifying them that this rule is in existence and insisting that it be observed."

May 11, 1927:

> "*Government of Film Boards.*—The President submitted a letter which he desired to send out all Film Boards explaining how far Film Boards were autonomous, how far they were responsible to Colonel Cooper as superintendent of Film Boards in Canada and financially to the General Managers Association. With one or two amendments this circular was approved."
>
> "*Appointment of Film Board Secretaries.*—The Directors reaffirmed the principle that all Film Board Secretaries should be hired and discharged with the consent and approval of Colonel Cooper. He was also given power to discharge any Secretary if he deemed it in the best interests of the Film Boards."

June 7, 1927:

After citing a case where it had been contended that the mailing of advertising accessories constitutes an acceptance of the contract by the distributor, these minutes set forth:

> "it was decided that each General Manager should insert in his Canadian contract a rule which would prevent decisions of this kind."

July 11, 1927:

> "*Minimum Advertising charge.*—The question of minimum advertising charge was discussed by the General Managers but as it was not an Association matter no resolutions are recorded."

August 31, 1927:

> "The question of certain contracts which had been taken with the theatre in Dauphin in the Manitoba district on which the Arbitration clause had been cancelled was discussed and it was agreed that all members of the Film Board in Winnipeg should be notified that the bringing in and sending forward of such contracts would be regarded by the General Managers as an improper proceeding."

During this year, as appears from a minute of the meeting of September 22, Colonel Cooper was, on behalf of his Association, quite active in reference to the claims of the Musical Protective Association, throughout Canada. This association claimed to represent the authors of a great number of musical compositions and was endeavouring to require that owners of theatres and other places of public entertainment should pay to them a licence fee for the right to perform their musical compositions. As to whether, if successful in respect to these claims, they would be benefitting the distributor or theatre owner is purely a matter of who would be required to absorb the charge, if this society succeeded in establishing the right to impose the same.

October 4, 1927:

> "*Toronto Salesmen's Meeting.*—It was decided to hold a salesmen's meeting on Monday afternoon at an early date. The meeting is to be held at 5 o'clock and adjourned at 6.30 for dinner. The following suggested programme was submitted and approved:
>
> Subject 1. General Reasons for Film Boards and Boards of Arbitration.
> Subject 2. Important Provisions in the Standard Contract.
> Subject 3. Ethics of Salesmanship.
> Subject 4. Where bookers may assist in upholding contracts.
> Subject 5. Credit Committee Rules."

October 19, 1927:

> "*Francais Theatre, Ottawa.*—A report from the Toronto Film Board on this case was presented, showing the proceedings that had been taken by them in connection with two Arbitration awards against this Exhibitor. It was agreed that the case had been well handled both by the Film Board and the Board of Arbitration, and that the Exhibitor had sent a letter to each one of the Exchanges stating that he proposed to take action against them on the general ground of 'Combination in Restraint of Trade.' After reviewing all the circumstances the Directors approved of all actions taken. Before the meeting adjourned a telegram was received from Ottawa stating that this Exhibitor had issued cheques for both the Arbitration awards against him, and that suspension of service would not be necessary."

December 6, 1927:

> "*Film Boards of Trade.*—An informal discussion took place with regard to Film Boards of Trade to which certain statements were submitted and discussed. This was unofficial business. These matters were referred to a Committee of the General Managers consisting of Mr. Hague, Mr. Bell and Colonel Cooper."
>
> "*Trailers.*—An informal discussion with regard to trailers and photographs took place and certain suggestions were made to the Secretary of the Toronto Film Board who was present during this discussion."
>
> "*Protection.*—This subject was discussed at some length and it was reported that an attempt is being made to draft a zoning system for the city of Toronto. The general opinion of the members present was against any increase in the protection periods as now practised."

The financial statement for the year ending December 31, 1927, discloses a total revenue of $21,555.15, derived from the same sources and in very much the same manner as in previous years, and from the Statement of Assets and Liabilities it appears that of the total cash of $9,494.75 there was held in New York $7,159.61. Fees for this year were collected from Famous Players Lasky, First National, Educational Films, Fox Films Inc., Universal Film, Warner Bros., Producers Distributing Corporation, and Film Booking Offices; and are called Producers' fees payable in New York. Distributors' fees payable in Toronto are Metro-Goldwyn Mayer $2,790.32, Producers' Distributing Corporation $625.04. Exhibitors' fees payable in Toronto, Famous Players and affiliations $480.

Memorandum to General Managers No. 12, February 18, 1927, suggests greater care in the selection of play dates, and having this in writing so that it can be proven in case of arbitration, and also as to obtaining proper signatures on contracts; and concludes with this statement:

> "These comments from this office may be out of order because they relate to the internal management of the affairs of the Exchanges with which this office has nothing to do. Our only reason for sending these comments is that they summarize the situation as revealed in cases which come before the Boards of Arbitration and in cases which have come before the Courts. If any General Manager desires more specific details with regard to these remarks Mr. Burnett of this office will be glad to call on him and give him further information on request."

During this period Colonel Cooper appears to have been calling meetings of general managers, as distinguished from the directors' meetings of the Cooper Organization. It should be borne in mind that this included one or two general managers of distributors who are not members of the organization. Memorandum No. 13 of February 23 indicates this.

Memorandum No. 15 of March 16, 1927, re lifting of C.O.D.'s is in part as follows:

> "At a meeting of the Directors to-day I was instructed to inform all General Managers that the general rule with regard to film sent C.O.D., was that under no circumstances must the C.O.D. be lifted."

Special Confidential Memorandum No. 26-A, dated May 28, 1927, is in part:

> "In connection with the case at Cobalt which came up recently where three Exchanges took contracts from a new theatre owner without the approval of the Toronto Film Board of Trade I desire to report that the Film Board has dealt with this situation and it is practically closed so far as they are concerned."

After suggesting that at the next meeting the matter would be further discussed Colonel Cooper in this memorandum continues:

> "It would seem that some good has been accomplished by the discussion which has taken place and everyone is now clearer as to his rights and responsibilities. At the same time I should like the Directors to know that in my view the matter is not yet finally disposed of and cannot be finally disposed of until all the General Managers are satisfied that justice has been done."

Memorandum No. 29, dated June 10, 1927, contains a draft of the uniform clause which requires the exhibitor to lease from the distributor advertising accessories at a certain rental, and providing that the delivery by the distributor to the exhibitor, of advertising accessories, shall not constitute an acceptance or approval of the contract. Memorandum No. 32, dated June 18, notifies General Managers that it has been agreed that this rule should go into force on July 1, 1927.

Memorandum No. 40, August 12, is as follows:

> "I am in receipt of a communication from the Toronto Film Board of Trade giving the following extract from the minutes of their meeting of August 8th:
>
> 'It was brought to the attention of the members that the practice of exhibitors requesting a cancellation clause in their contracts is growing more prevalent. Upon motion duly seconded it was resolved that a letter be sent to the General Managers Association requesting that the General Managers issue instructions to their branch managers to the effect that no contracts be taken with a cancellation clause.'
>
> "This matter will come up at the next meeting of the Directors but in the meantime it would seem desirable that each General Manager should take any action which he may think advisable and necessary under the circumstances. I am assuming that there will be no difference of opinion with regard to this situation and that every person recognizes the danger to the industry of such departure from the Standard Exhibition Contract which has been officially recognized by this Association."

In Memorandum No. 61, November 3, 1927, re Canadian Film Boards of Trade, after reciting the amount of money collected and expended during September and October, Colonel Cooper states:

> "We are pleased to say that all the companies have co-operated 100 per cent in the new system and we believe that we shall attain the benefits which we anticipated."

Memorandum No. 62, November 2, 1927, refers to a series of fines for infractions of the rules, by members of the Cooper Organization.

Memorandum No. 69, December 10, 1927, marked "Confidential," is in reference to trailers, which are slides or films advertising the coming of a picture at a theatre, and a suggestion was made of reducing the rental of trailers in certain Toronto theatres from $1 to 75 cents. The memorandum continues:

> "It seems advisable that nothing should be omitted that may be necessary to bring the new rule into force *with uniformity* in all offices on January 1st."

Memorandum No. 70, dated December 19, 1927, re Columbia Theatre, Victoria, is as follows:

> "We are informed that Columbia Theatre, Victoria, which is at present leased to Mr. Clark, will be taken over by the owner, Mr. Priestwieck, on the 1st of June 1928. As this coming transfer has been known to your Branch Managers in Vancouver since October, it should be understood that all present contracts with this theatre, must be played out by May 31st, 1928. Any contracts unplayed at that date will not be enforceable against the new owner. At least it would be very difficult to force the new owner to take over existing contracts inasmuch as every Exchange has had adequate notice of the future transfer."

The Arbitration report for the year ending December 31, 1927, is attached, and shows a total of claims filed by Distributors of $69,950; filed by Exhibitors $2,621.15. Of these, claims amounting to $51,018.94 were considered by Boards of Arbitration. Awards were made of $31,831.34 which were complied with and $1,037.55 which were complied with after a demand for security, and $7,904.02 which were uncomplied with and service suspended after failure of exhibitor to deposit security. The total awards of the Distributors were $39,730.41, the largest amount in favour of an individual distributor being $15,770.76 in favour of Regal Films. Awards in favour of Exhibitors amounted to $1,042.50.

The report of the Credit Committee of the Canadian Film Boards of Trade during the year ending December 31, 1927, states that purchasers of theatres assumed the contracts of the vendors to the extent of $156,076.95, and the contracts in existence at the time of transfers of theatres that were not assumed amounted to $67,384.50.

5. ACTIVITIES IN 1928

The Annual Report for the Year ending December 31, 1928, is in part as follows:

> "There were no changes in our Constitution or By-Laws during that period, which indicates that the plans formulated at the time of obtaining the charter were well laid.
>
> "Our relation with the Motion Picture Producers and Distributors Association of New York, of which Mr. Will H. Hays is the president, continues to be most gratifying. The co-operation with them ensures that we shall have plenty of financial support to carry on any work that may be necessary. While it is quite true that our dues are based entirely on the rentals in Canada, nevertheless it is doubtful if we could get the same amount of return without their continued co-operation.
>
> "While the work of the Film Boards does not come directly under this Association, nevertheless your President must necessarily be the general supervisor of the work in Canada. In this connection we have had the keen interest and sympathetic co-operation of Mr. C. C. Pettijohn and Mr. Gabriel Hess. . . . . . .
>
> *Film Boards of Trade.*—During the year the Film Boards of Trade seem to have accomplished more than in the previous year. The chief result from the establishment of these Boards has been a growing feeling that a contract is a contract and not a scrap of paper. Exhibitors do not over-buy in the way that they once did and as a consequence business is more satisfactory."

In my opinion the evidence does not justify this statement in regard to overbuying.

The amount of contracts salvaged during 1928, i.e., assumed by the new owner in case of a transfer of theatre, amounted to $137,441; and that of contracts not assumed, $67,532. Of the latter, bankruptcies accounted for $40,000.

ARBITRATION

Amount of claims filed in 1928	$ 111,326 37
Amount involved in settlements	24,519 16
Awards against Exhibitors	50,765 70
Awards against Distributors	6,474 79

> "*Standard Exhibition Contract.*—The new Standard Exhibition Contract and the Revised Rules of Arbitration relating thereto were adopted by this Association and the various Exhibitor Associations in Canada and came into force on June 1, 1928."

Colonel Cooper's evidence on page 4058 on this point is:

> "Q. Please tell me what Exhibitor Associations in Canada adopted the Standard Exhibition Contract?—A. I am afraid you will have to give me a chance to look that up.
>
> "Q. I am very anxious to know that. It is one of the important things that I would like to have?—A. Yes."

There are no Exhibitors' Associations in Canada, as far as I could ascertain, that could be said to be at all representative of the Exhibitors.

From Colonel Cooper's evidence on page 4101 it appears that the different clauses in the Standard Exhibition Contract were taken up and discussed with

Mr. Lawson, who pointed out their serious objection to two clauses relating to posters and the clauses relating to arbitration. Colonel Cooper states (Evidence, p. 4103) that no changes were made in respect to the posters, and it appears that no change was made in the arbitration clause. In any event it appears that Mr. Lawson represented an association of thirty exhibitor members.

The minutes for the year ending December 31, 1928, are in part as follows, on the following dates respectively:

January 4, 1928:

"*Zoning in Toronto.*—The general feeling of the Directors was that in most cases 14 days should be sufficient protection for Key-Neighbourhood Houses in numbered zones, but that they would not object to this being increased to 21 or 28 days where the key-neighbourhood houses required special protection on account of the proximity of certain theatres charging lower prices."

March 27, 1928:

"*New Standard Contract and Rules of Arbitration* were submitted for consideration. After discussion Messrs. Cohen, Hague and Milligan were appointed a Committee to go into the question of the new Standard Contract for Canada and to report back to a meeting of the Directors next week."

April 24, 1928:

"*Revised Standard Exhibition Contract.*—The President submitted a copy of the new Standard Contract with the necessary provisions to make same applicable to Canada. Moved by Mr. Bell, seconded by Mr. O'Loghlin and resolved that the revised Standard Exhibition Contract, identified by the signature of the President of the Motion Picture Distributors and Exhibitors of Canada (Inc.), bearing date of June 1, 1928, be adopted by all Distributors members of this Organization, to come into effect June 1, 1928."

"*Rules of Arbitration.*—Regularly moved, seconded and resolved that the revised Rules of Arbitration as submitted by the President and bearing date of June 1, 1928 be adopted by this Association."

June 12, 1928:

"*C. O. D. Advertising Shipments—Calgary.*—Several complaints that advertising accessories were being shipped by some of the Calgary Exchanges without money in advance had been investigated and a report was presented showing that the cases were not numerous and that the President of the Film Board there believed that these cases had now been eliminated."

"*Ten Cent Admission.*—The question of enforcing the clause regarding minimum admission price of ten cents to theatres, was taken up and discussed. The President was instructed to notify the Film Boards that all Clauses in the Standard Contract were worthy of support without exception, and it therefore would be the duty of every Branch Manager to exercise all his influence to see that this standard minimum price is maintained."

July 19, 1928:

United Artists became a member of the Association as of May 5, 1928, and Mr. Masters was elected a Director.

August 1, 1928:

"*Exhibitors Co-operative Ltd.*—A report in connection with a new purchasing company known as Exhibitor's Co-operative Ltd., incorporated under the Laws of the Province of Ontario, was read as follows:

"We beg to report that two conferences were held with Mr. Lawson of the Exhibitors Co-Operative Ltd. with regard to various points which might arise in connection with their dealings with members of our Association.

"At the first meeting Mr. Hague and Mr. Thomson, our Solicitor, met Mr. Lawson in this office and we had a general talk with regard to various points. As a result we came to the conclusion

"(1) That cheques from this Organization should be accepted by all our Companies on future deliveries under existing contracts. Our Solicitor was of the opinion that any Exhibitor had the right to appoint some man as agent to pay his accounts.

> "(2) Mr. Lawson agreed that there would be no interference by him or his associates in the company with playing dates under existing contracts. In other words, all availability notices, arrangements for playing dates, etc., would be carried on as heretofore, directly between the exhibitor and the Exchange.
>
> "(3) The question as to new contracts was laid over for consideration at a later date.
>
> "At the second meeting were Messrs. Hague and Bell to represent the Directors, with Mr. Thomson, our Solicitor, Mr. Lawson represented his Association together with Mr. Bill Bailey, President and Mr. Nat Taylor, Secy. Treas. The different Clauses in the Standard Exhibition Contract were taken up and discussed and Mr. Lawson pointed out their serious objection to two Clauses particularly.
>
> (*a*) The Clause relating to posters, and
> (*b*) The Clause relating to Arbitration.
>
> "In reply to this it was pointed out that it is advisable to have a Standard Contract throughout America, and especially in Canada, and that no amendments could be made in the middle of a season to such contract at the request of a small body of theatres. Mr. Lawson recognized the force of this argument, but wished to serve notice of their objection on these two points. He asked the Committee to see what they could do immediately with regard to the Poster Clause.
>
> "Two minor points were discussed which related to the question as to whether cheques should be made out separately for each theatre or whether it would be possible for the Company to send a cheque in covering two or more theatres. The other point related to the possibility of the Exchanges sending a duplicate advance invoice to the Company so that the Secy. Treas. would know exactly what payments he had to make each day.
>
> "After the meeting the matter was further discussed with our Solicitor and he advised that he thought it would be well if each Exchange demanded from the Company an individual letter signed by their President and Secy.-Treas. and stating that the Company held power of Attorney from such-and-such theatres. He advanced the opinion that the fact that the By-laws of the Company required power of Attorney from each of these theatres, yet it would be better to have a letter which could be produced in case of dispute between the Exhibitor and the Exchange.
>
> "A letter was submitted from Mr. Nat Taylor, the Secretary of this Organization, giving a list of 32 theatres who are now members of this company, 31 of which are in Toronto and one in North Bay. A copy of the Standard Agreement signed by each one of these members was also submitted.
>
> "After considerable discussion it was decided by the General Managers that cheques would be accepted from this Association in payment of film being supplied under existing contracts with the theatres named, but that no new contracts should be made for the time being.
>
> "It was also decided that certain points which came up for discussion should be submitted to Arthur Thomson, the Association's Solicitor, and also to Mr. Gabriel Hess. As Mr. Hague was proceeding to New York this evening he was instructed to interview Mr. Hess and see what advice he had to offer as to the policy which the General Managers should adopt."

As has already been pointed out, there does not appear to have been any change in the Standard Contract by reason of the conferences referred to in the above minute. In this connection it might be useful to refer to a letter (part of Exhibit 335) dated September 4, 1928, from Mr. Clair Hague, General Manager of Canadian Universal Film Co. Limited, addressed to Mr. Lou Metzger of the New York Office, in which he says:

> "In reply to your letter regarding Taube's efforts on the Exhibitors Co-operative. There has been nothing done with our Exchange or any other Exchange as regards selling. Mr. Taube was trying to find out exactly the situation and what their requirements were in the different situations where the Nathanson houses are in opposition, he was merely trying to get their ideas and the low down on what they are going to insist upon.
>
> "All the Exchanges have held off negotiating definite deals due to the fact that we know and realize that a number of the members are getting impatient as they have not bought any of this coming season's product from any Company and the exhibitors want to know where they are at. All the General Managers feel that by holding off of closing all deals with this organization that the exhibitors will become very much dissatisfied and step out and protect themselves by buying

their own Product. We are willing to submit a deal to any exhibitor who is a member, but they are trying to stand pat and have it all done through their representative whom we are very much opposed to doing business with.

"I am keeping very close touch with this situation. You quite realize that if the Exchanges recognize them as a body there is no telling how strong they will grow in the future."

September 6, 1928:

"*Poster Situation in Ontario.*—The General Managers again approve of the action that had been taken by the Branch Managers in Ontario with regard to enforcing the Clause relating to advertising accessories, and suggested that they be informed that the matter should receive very careful attention during the month of September."

"*Exhibitor's Co-Operative Ltd.*—A letter from the solicitor dated September 5 with regard to this Organization was submitted to the Directors, but did not meet with general approval. It was decided not to receive the communication for the present."

September 25, 1928:

"*Unsalvaged Contracts.*—A discussion took place regarding the sending out of availability notices on all unfulfilled contracts, season 1927-28, and the sending to Arbitration contracts in suspense due to change of ownership, etc.

"The Directors agreed that it was desirable that all unfulfilled contracts should be arbitrated whether it was a case of neglect to use the film, closing the theatre, change of ownership, or any other similar reason."

November 28, 1928:

"*New York Reserves.*—On motion it was decided to request Mr. J. Homer Platten, Treasurer of the Motion Picture Producers and Distributors of America, to invest up to $10,000 as a time deposit drawing 3½ per cent interest in some responsible institutions in New York, as per Mr. Platten's letter of September 28."

The financial statement discloses an income of $23,026.70, derived $18,777.58 from the New York contributors and $4,731 from the Toronto members. The statement of assets and liabilities discloses that there was an item of cash held in New York of $10,437.19. The contributing producers are practically the same as in 1927, except that United Artists takes the place of Distributing Corporation, and that the Pathé Organization contributes in Toronto.

Memorandum No. 5, dated January 30, 1928, *re* "Blind" and "Block" Booking is in part:

"In discussing the British Quota Law, there is one point which it would seem important that we should keep clearly before our minds and which we should press on the attention of the public.

"This point is that there is a difference between "blind" booking and "block" booking. The Hays organization have drawn attention to this point in a circular just issued giving a resume of the Act.

"'*Blind*' booking is prevented by setting up a system of Registration and providing that no one may enter into an agreement to rent any new picture unless it has been registered. As a picture cannot be registered until it has been shown, this will prevent 'blind' booking.

"'*Block*' booking is checked by prohibiting the booking of any picture for more than a stated period in advance of the date of the booking agreement."

Colonel Cooper's evidence on page 4110-C is:

"Q. I do not understand Col. Cooper admitting that block booking is an evil.—A. He put it very nicely. He said 'that is an evil that is alleged.'

"Q. It exists, too, doesn't it? Whether it is an evil or not the practice exists? It may be a good thing.—A. I think that I would be justified in saying that it does, although it is not a universal practice, and there are modifications. But it does exist, no doubt."

Memorandum No. 14, April 9, 1928, is as follows:

> " The point has been raised as to whether it is necessary for an Exchange to assign dates and ship film when a contract bears a 'pay or play' clause.
>
> "This question was submitted to Mr. Gabriel Hess and it is his contention that in order to place the exhibitor in default it is necessary for the Exchange to actually make a shipment. A copy of Mr. Hess's opinion is attached."

Memorandum No. 18, June 13, 1928, *re "Minimum Admission"* is in part as follows:

> "Will you please call the attention of your members to Clause Fifteenth in the Standard Exhibition Contract, in which the Exhibitor warrants and agrees that an actual admission fee shall not be less than ten cents. This clause should receive the same respect as other clauses in the contract, and should be enforced."[1]

Memorandum No. 29, August 10, 1928, is as follows:

> "*Uncompleted Contracts.*—I have been having some investigations made by the various Film Boards and find that this year there is perhaps a larger percentage than usual of unplayed pictures on contract. May I therefore suggest that this is the opportune time to clear up all situations of this kind in connection with the 1927-8 Program, and that you should send all your Branch managers instructions to see that this is done.
>
> "May I also strongly urge upon you that you should consider the advisability of making a rule that no pictures be supplied on *New Contracts* to any theatre owner until such time as all feature pictures on his *Old Contracts* have been dated in.
>
> "I propose to make this suggestion at the next meeting of the General Managers, but in the meantime if you think it advisable you might adopt this policy. A suggestion only."

Memorandum No. 31, August 17, 1928, is as follows:

> "The enclosed circular letter which has been approved by all the members of the Film Board, is in envelopes ready for mailing to all Exhibitors in the Province of Ontario.
>
> "This circular will be mailed Saturday noon unless some one of the General Managers makes an immediate objection to it.
>
> "The main object in sending out this circular is so that it may be produced as evidence in any Controversy with regard to 'advertising accessories' which may come before the Board of Arbitration during the next twelve months."

Memorandum No. 49, December 1, 1928, *re "Cancellation of Unplayed Pictures"* is as follows:

> "There seems to be some doubts in the minds of some of our members as to the policy of this Association in regard to cancellation of unplayed pictures at the end of the season or for any other purpose. When I speak of the policy of this Association I mean the policy laid down for this Association and for the Film Boards of Trade by the General Sales Managers in New York, and transmitted to us through the Hays Organization.
>
> "On March 11, 1926, this matter was considered at a special meeting. There had been a great many abuses and unfair practices in connection with this matter and the meeting considered how to eliminate all these. It was decided:
>
>> 'that the allocation and prorating of contracts be discontinued. Thereafter all representatives in the membership of all the Film Boards of Trade in the United States were advised that they would not be permitted to consent to the allocation of play dates, the reduction of the number of pictures contracted for, or the reduction of the rental prices specified in any existing contract, excepting in cases of most unusual circumstances which in their judgment demanded that some relief be granted an exhibitor; and in all such cases that all the facts be submitted to their respective home offices for final decision.'
>
> "I would be glad if you will give this ruling your careful consideration and make up your minds how far your policy corresponds. If it does not correspond then I think you should take up the matter with your General Sales Manager in New York and make certain that you are following the line of policy which he and the other General Sales Managers would approve.

---

[1] This clause is not in the Canadian Exhibition Contract which was adopted on May 15, 1930.

> "I suggest this course of action on your part because the efficiency of our Film Boards depends upon such instructions being sent out from this office as are in harmony with your sales policy. For example, a case came before the Arbitration Board in Montreal recently with regard to cancelling the contracts of an exhibitor who had lost his lease. Some of the Companies took the ground that the loss of the lease was none of their business and that the man should pay for unplayed pictures. Other companies took the ground that the man should not be forced to pay for pictures under these circumstances. This meant that some of our representatives on the Arbitration Board took one view and some took another. You will recognize that this is a condition which makes it extremely difficult for me to keep our Arbitration Boards working along uniform lines. It appears to me that in this case all the Managers should have voted that the contracts were good and that the man had to pay unless the General Manager in Toronto, or the General Sales Manager in New York had expressly cancelled the contract. If our Branch Managers are to be allowed to decide these matters according to their own particular idea, then uniformity is impossible. Moreover, if the General Managers themselves are not agreed to the policy as to cancellations then it is impossible to get uniform action and decisions on such matters among the Branch Managers.
>
> "I shall bring the subject up for discussion at our next Directors meeting."

Memorandum No. 51, dated December 13, 1928, relates to a situation in Trail, B.C., in connection with the Rialto Theatre. I shall refer to this matter in dealing with that situation.

Memorandum No. 54, dated December 21, 1928, refers to a rule adopted at the Trade Practice Conference held in October, 1927. This rule is as follows:

> "*Abuse of Buying Power.*—Resolved that the use of buying power for the purchase of more photoplays than an exhibitor can consume, in order to deprive a competing exhibitor of the opportunity of purchasing his supply of photoplays, whether it be an attempt to corner the market against such competing exhibitor, or whether it be with the thought of forcing a competing exhibitor out of business, or the compelling of such competing exhibitor to sell his theatre, is an unfair trade practice."

The wording of this rule is somewhat peculiar, and it will be observed that it does not apply to the situation as we have it in Canada, where the block booking is not for the purposes indicated in the resolution, but rather is caused by the distributor wishing to sell the poorer end of his pictures with the better end and exists by reason of the exhibitor's anxiety as to his supply of pictures, nor does it apply to a situation where an exhibitor is able to obtain a commitment giving the right to a selection from a large number of pictures of a lesser number for actual exhibition.

Memorandum No. 54, December 29, 1928, notifies the members of their fees for the coming year, as fixed by the Budget Committee for Film Board matters.

The Credit Committee Report for the year discloses that it reported favourably upon 128 transfers of theatres, and unfavourably on 18, and no report was made on 7, making the total number of transfers investigated 153. Of the 18 reported upon unfavourably, 15 were reported "Credit Information Refused," and three were reported as fraudulent. Of the 15, 11 were subsequently reported upon favourably, and of the 18, 7 remain on the Credit Information List as at December 31, 1928. The report further shows that on transfers of theatres the total value of the contracts assumed by the new owners was $137,441, the value of contracts not assumed, $67,532.75.

6. ACTIVITIES IN 1929

The annual report of the year ending December 31, 1929, was presented on March 25, 1930. It showed that on December 31, 1929, 364 theatres had been equipped for sound. In regard to Film Boards of Trade, the report says:

> "During the year just closed there has been a considerable development in the functions and effectiveness of our six Film Boards. We have now five full-time secretaries as against three in 1928. . . . We are deeply indebted to Mr. Pettijohn, Mr. Hess, Governor Milliken, Colonel Joy and Mr. Dickinson for active and sympathetic co-operation in this work.

> "The transfer of theatres was well handled last year, and the total of contracts salvaged during .... 1929 are given .... as follows:
>
> | | |
> |---|---|
> | Contracts assumed during the year in the case of transfers.. .. .. | $270,967 67 |
> | Contracts not assumed.. .. .. | 47,120 00 |
> | In this latter amount bankruptcies accounted for (estimated).. .. | 35,000 00 |
>
> "During the year there were 87 transfers where the contracts were salvaged; 63 where contracts were not salvaged, and 62 where there were no contracts to transfer."
>
> "*Arbitration.*—Arbitration has been satisfactory also, largely because exhibitors have felt freer to bring their grievances before the arbitration boards."

How this statement could be made in the face of the actual figures which are given in the Arbitration Report at the end of the volume of minutes is difficult for one to understand. It shows that the total number of claims filed during 1929 by distributors is 489, amounting to $147,305.11, whereas the number filed by exhibitors is 34, amounting to $75,732.34, whereas in 1928 the total number of claims filed by distributors is 347, involving $99,614.69, and by exhibitors 22, involving $11,711.68. The increase does not seem to me to warrant the conclusion stated in the report. The report states as follows:

Number of claims filed, 1929..	523	
Amount involved..		$223,137 45
Settled prior to Arbitration..	144	
Amount involved in settlements..		98,284 00
Awards against Exhibitors..		87,571 84
Awards against Distributors..		8,066 50

The report continues:

> "Relations with the various groups and organizations of Exhibitors have been necessary in order to assist in the work of arbitration, and help has also been extended to these bodies in connection with amusement taxes, copyright laws relating to the performing rights in music, and general provincial regulations regarding theatres."

The Minutes for the year ending December 31, 1929, are in part as follows, on their respective dates:

January 9:

The Budget for the various Film Boards and Head Office were adopted, and the annual fees fixed.

February 5:

> "*Palace Theatre, Calgary.*—A report from the Calgary Film Board as to the contracts taken with Alberta Theatres Ltd. operators of the Palace Theatre, Calgary, during 1928, was submitted for consideration. It appears that the Alberta Theatres Ltd. was a joint stock company with $20,000 capital and $30 paid up. The people who purchased the theatre purchased it through the National Trust Co. from certain owners who had formed the Alberta Theatres Ltd. as an operating company. The contracts outstanding amounted to about $12,000 and these were not taken over by the new owners. The question was raised as to what should be done to collect on the unplayed contracts. Instructions were given that all these contracts should be taken to Arbitration and that at least one award should be taken to Court if, on investigation, this was thought advisable."
>
> "*Poster Exchange.*—The President reported on the actions taken through the Toronto Film Board to bring certain exhibitors in Toronto to Arbitration for not purchasing advertising accessories direct from the Exchanges. The Directors agreed that it was wise to go on with a test arbitration case, as this particular clause in the contract had never been before a Canadian Arbitration Board."

March 26, 1929:

The President reported that the following companies were members in good standing of Class "A" of the Association and were represented by the "D" members shown opposite their names, as follows:

"A" Members

Canadian Educational Films Ltd.
Canadian Universal Film Co. Ltd.
Famous Lasky Film Service Ltd.
First National Pictures Inc.
Fox Film Corporation Ltd.
RKO Distributing Corp. of Canada Ltd.
Regal Films Limited
United Artists Corporation Ltd.
Vitagraph Inc.

"D" Members

James Travis
C. Hague
M. A. Milligan
R. S. Bell
J. P. O'Loghlin
P. C. Taylor
Henry Nathanson
H. M. Masters
B. F. Lyon

Class " B " and " E " members are still corporations with 20 corresponding personal representatives of Famous Players and their affiliations and employees.

July 2, 1929:

> *"Trail, British Columbia.*—Some correspondance with Mr. A. Lauriente of the Rialto Theatre, Trail, B.C., was presented showing a continuation of complaints from this theatre owner that he was unable to get an adequate supply of film. The President was instructed to ask him for more specific information."

October 24:

> *"Exhibitor's Co-Operative.*—There was some discussion with regard to the operations of the Exhibitor's Co-Operative in Western Canada and in relation to their unofficial request for an Investigation by the Government. No conclusions of any kind were arrived at, but the members reaffirmed again their individual opposition to co-operative buyers."

November 19:

> *"Standard Contract.*—The following suggested letter to the exhibitors was approved subject to the opinion of Mr. Gabriel Hess, General Solicitor for the Hays Organization:—"

This letter is in part:

> "Before the present contract was adopted in June 1928 the proposed form of contract was laid before all the Exhibitor organizations in Canada so that they might express any opinions they cared to express before its general adoption in this country. It will probably be necessary to repeat this process some time early in 1930."

I have already expressed an opinion as to what was done in this regard in 1928. No satisfactory statement has been given to me as to whether this letter was sent, or to whom although Col. Cooper was asked on more than one occasion for the information.

In the minutes of the meeting of December 10, however, there is this paragraph:

> *"Standard Contract.*—It was announced that the circular relating to future amendments to the Standard Contract, mentioned in the previous Minutes, had been sent out to general managers of all chain theatres and to a number of the larger exhibitors as follows: J. Earl Lawson—Exhibitor's Co-Operative Ltd., Toronto; Maurice West—Province Que. Theatre Owners Ass'n. Montreal; W. J. Long—Independent Theatre Owners Ass'n of Northern Alberta, Edmonton; H. N. Jernberg—Motion Picture Ass'n of Central Canada, Winnipeg; Harry Alexander—Motion Picture Theatre Owners, Toronto; F. G. Spencer—F. G. Spencer Amusement Co., Saint John; W. P. Dewees, Vancouver; Sam Bloom—Bloom & Fine, Toronto; Jules Allen—Premier Theatres Limited, Toronto; Moorehead & Filman, Brampton; Fred Guest, Hamilton; P. J. Nolan, Ottawa; A. Aidlman, Consolidated Theatres Ltd., Montreal; Geo. Ganetakos, United Amusement Co., Montreal; Arthur Cohen, Famous Players Canadian Corporation, Toronto."

The statement of income and expenses for the period shows an income of $27,236.50, on which $21,841.56 was either received from or retained in New York. The statement of assets shows a sum of $13,424.46 as cash held in New York and funds on deposit with Guaranty Trust Company, New York $5,000.

The $21,841.56 was contributed by United Artists, Famous Lasky, First National, Educational, Fox Film, Universal, Warner Bros. and F. B. O. They are referred to as Producers' fees payable in New York. There was only one distributor's fee payable in Toronto, namely that of Regal Films, and Famous Players' contribution of $480 was also made.

Memorandum No. 34, dated June 13, 1929, is as follows:

> "Mr. Gabriel Hess has forwarded us copies of a uniform rider to be used by the national distributors with the Standard Exhibition Contract when contracting for sound pictures.
>
> "We enclose you herewith one copy for your information. Will you please see that a copy of this is sent to each of your Branch Managers if you propose to adopt it in Canada.
>
> "Please notify us when this has been done."

The Arbitration Report shows that during 1929 there were 303 awards rendered, involving $95,638.34; of these 22, involving $8,066.50, were against Distributors; and 281, involving $87,571.84 against Exhibitors. 21 claims, involving $13,899.23, were dismissed. There were 76 claims still pending, involving $25,172.96. Court proceedings were taken to conform to awards. 104 awards, involving $19,470.44, were complied with; 80 within the time allotted by the award; 9 after security had been demanded, and 15 after suspension of service. There were 174 awards uncomplied with, involving $60,219.67. In these, the distributor cancelled, and service was suspended after failure of the exhibitor to deposit security

The Credit Committee Report for the year 1929 shows the total number of transfers reported favourably 190; and the total number of transfers first reported unfavourably, 24. Of these 23 were reported to be placed on the "Credit Information Refused" List, and one on the Fraudulent Transfer List. Eighteen were subsequently reported favourably, leaving 6 still on the " C.I.R." List.

7. ACTIVITIES IN 1930

At the time of taking evidence, no annual report had been made for the year ending December 31, 1930. The minutes, however, were available, and extracts of minutes of meetings held under dates hereafter mentioned are as follows:

January 13:

> "*Exhibitors Co-operative Ltd.*—Letters from the solicitors with regard to the legality of accepting the signature of a co-operative company such as the Exhibitors Co-Operative of Canada Ltd., on Standard Contracts was submitted. There was a general discussion with regard to the practice in the United States and to the possibilities in Canada. As the subject is one for the decision of the individual Exchanges, it was not necessary to come to any decision and none was reached."

February 24:

> "*Revised Standard Contract.*—The President reviewed the work done during the past three or four months in connection with a new Standard Contract for Canada to come into force on June 1, 1930. The matter had been discussed with the various exhibitors Associations, with the Association's solicitors and with Mr. Gabriel L. Hess, General Counsel for the Hays Organization. A draft of a revised Canadian Contract was submitted in which sixteen of the present Clauses were retained and six eliminated. A new Arbitration Clause as drafted by the Canadian solicitors was submitted and also one or two other verbal changes. A draft of the revised Arbitration Rules was also submitted.
>
> " The chief features of the revised Arbitration Rules was that the principle of asking for deposits from exhibitors who failed to comply with awards was to be dropped, and the Arbitration Board reduced from six to three members.
>
> " Copies of these suggestions had already been submitted to the Directors and they had had a chance to study them. The suggestions were adopted unanimously subject to the following resolution:

"Resolved that: We hereby express our approval of the principle of a Standard Contract such as has been in force in Canada for five years, and which is also in force in Great Britain, and we suggest that the present Standard Contract and present system of Arbitration be continued in Canada for the season of 1930-31, with such amendments and modifications as recommended by Tilley, Johnston, Thomson and Parmenter, general solicitors for this Association, as per draft attached, and subject to the general approval of such General Managers in New York as are interested in the Canadian situation."

March 25, 1930:

"It was moved by Mr. Masters and seconded by Mr. P. C. Taylor that the Treasurer of the Hays Organization in New York be requested to deposit an additional $10,000 from the funds with the Guaranty Trust Company, making $15,000 in all."

It appears (Evidence, p. 4285) that this money on deposit in New York is on a time deposit with the Guaranty Trust Company in the name of "Motion Picture Producers and Distributors of America, Inc., for the account of Motion Picture Distributors and Exhibitors of Canada."

March 25:

"*Standard Contract.*—It was reported that copies of the proposed revised standard contract had been submitted to all companies in New York and that Mr. Louis Phillips had undertaken to get the companies together and have them agree on the form submitted."

April 17:

"*Standard Contract.*—The President reported on his visit to New York and the meeting of company solicitors which was held in the Hays Organization for the purpose of considering the proposed Canadian Exhibition Contract as drafted by Tilley, Johnston, Thomson and Parmenter. The Arbitration Clause and the change in the rules of Arbitration were approved. The remainder of the Contract was also approved with one or two changes, which were explained.

"After the discussion it was decided to publish a page advertisement in next week's issue of the Canadian Moving Picture Digest, giving a summary of the changes for the benefit of the Canadian exhibitors and asking them to wire any suggestions they might desire to make. As we had already considered suggestions from several important quarters, it was thought that few suggestions would be received. Still this gesture seemed important.

"It was also decided that the Contract and the Rules of Arbitration should be set up in type immediately and copies forwarded to all companies concerned before the final electrotyping of same.

"It was distinctly understood that the Road Show Clause and Sound Rider should be in the discretion of the individual distributors and should not be standard clauses."

The advertisement above referred to is Exhibit 265, and is a page advertisement. It makes some analysis of the eliminations from the present contract, additions thereto, and changes from the present contract, and quotes in full a new Arbitration Clause as drafted by the Cooper Organization's Toronto solicitors. In this connection it says:

"NOTE.—This clause is more in harmony with the Arbitration Clause in the British Standard Contract and with the Provincial Arbitration Acts in force in Canada. It will be noted that the so-called penalty clauses are to be eliminated and enforcement of awards will be a matter of court procedure as in Great Britain."[1]

The advertisement also states:

"It has been impossible to consult every Canadian exhibitor and this is published for your information. If you take exception to any change indicated above, please wire the undersigned, and your suggestion will be given consideration. If we do not hear from you your general approval will be assumed.

"On behalf of the Committee,
"(Signed) JOHN A. COOPER."

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[1] The clause in the British Contract, and that in the present Canadian Contract, will be subject to some later comment in this report.

It will be noted that Mr. Cooper in the advertisement does not state what the Committee is, on behalf of which he signs, and there is no evidence anywhere that any committee composed of distributors and exhibitors was formed to deal with this matter, or at any time existed, other than a committee of distributors or representatives of producers. Colonel Cooper says (Evidence, p. 4288) that he did not get any answers to this advertisement,

"showing that the exhibitors have absolute confidence in us."

At any rate, the gesture, while it seemed important to the Directors of the Cooper Organization, as indicated by the above minute, seems to have entirely escaped the attention of the exhibitors, or perhaps they realized that after all it was only a gesture.

May 6, 1930:

> "*Calgary Awards.*—A case arose where an Exchange which had an award against an exhibitor decided to go to Court and have the award confirmed. The Film Board secretary then asked whether the exhibitor should be put on the Deposit List irrespective of this reference to the Court. After considerable discussion it was decided to instruct the secretary that in such cases the rules with regard to deposits should be proceeded with without taking into consideration any court action that might be taken under the award by the distributor on his own account."
>
> "*Canadian Exhibition Contract.*—A specimen of the set-up of a completed contract was considered and approved. The question of a Canadian sound rider was also discussed and the President was asked to issue a circular giving the latest information and advice on this point."

X.—STANDARD EXHIBITION CONTRACT

This subject, while properly a part of the activities of the Cooper organization, is of sufficient importance to be dealt with separately.

1. Inception and Revisions

Prior to March 31, 1926, the distributors each used for the sale of their pictures, contracts which, while naturally containing somewhat similar provisions, differed very materially in some of their important features. On March 1, 1926, there had been adopted in the United States a Standard Exhibition Contract for use by all of the exchanges in making contracts with exhibitors for the sale of moving pictures. Apparently the Hays Organization was largely instrumental in the preparation and adoption of this contract, and it became one of the principal activities of the Cooper Organization to have it universally adopted for use in Canada.

The first reference that I find in the minutes of the Cooper Organization, as to the desirability of having a uniform contract in Canada, appears in the minutes of a meeting of May 1, 1925, when the matter was discussed and Colonel Cooper undertook to draft a uniform contract. This was to contain the arbitration clause and the contract was to be based on existing contracts and the Uniform Contract now in use in the United States. Later a committee was appointed to draft a contract as closely approaching the Standard Contract used in the United States as might be.

It was not, however, until March 5, 1926, and immediately following the adoption of a Standard Exhibition Contract in the United States, that a Standard Exhibition Contract was adopted by the Cooper Organization for use in Canada. The minute in reference thereto, of a meeting held on that date is:

> "*New Standard Contract.*—The New Standard Contract was considered and its adoption was recommended. There were some minor changes in the wording of the contract rendered necessary for adoption of the contract in Canada."

Apart from this, the contract as adopted was as printed by the Hays' Organization and sent over here for consideration.

From memorandum No. 25 dated March 10, 1926, and previously referred to in this report, there seems to have been considerable objection to the adoption of this contract by the Motion Picture Theatre Owners, which was a small association of theatre owners in Toronto, and nowhere does it appear that there was any movement on the part of any theatre operator in Canada for the adoption of such a contract, or any kind of a uniform contract, with the possible exception that Mr. Arthur Cohen, who was then Manager of Regal Films Ltd., and Secretary of Famous Players Canadian Corporation, was a member of the committee above referred to, appointed in 1925 to draft a uniform contract. I can find no evidence anywhere that any independent exhibitor ever expressed any desire for such a contract, On March 30, 1926, the directors of the Cooper Organization then being Messrs Clair Hague, B. F. Lyon, O. R. Hanson, Arthur Cohen, J. P. O'Loghlin, M. Milligan, Clarence Robson and Colonel J. A. Cooper who were present at the meeting and Mr. Bach who was not present, adopted the Standard Contract "as revised and approved by the Hays' Organization," and decided that it should come into force in Canada on May 1, 1926.

On May 4, 1926, a new contract had come into use by some of the distributors. On June 1, 1926, it was reported that the new contract was being used by United Artists, Canadian Universal, Warner Bros., Fox, and Vital, and it was decided that all companies should be advised that the contract would come into force on July 1, and that every company should make an effort to have the new forms in the hands of all salesmen by that date. On July 6, 1926 it was reported to a meeting of directors that all exchanges are now using the New Standard Contract, except that Educational and Independent are using a rubber stamp instead of printing the new contract, and that booklets had been issued containing:

1. Revised By-laws *re* Arbitration.
2. Credit Committee, Rules and Regulations.
3. New Arbitration Clause.

and that these had been distributed to all members of film boards and to all general managers. So that we may take it that at this last date the New Standard Contract had come into universal use by the Canadian distributors. The contract thus adopted is Exhibit 241 and is identified by the signature of Colonel J. A. Cooper, President, under date of March 31, 1926. The constitution of Film Boards of Trade and the by-laws relating to Arbitration, and the Arbitration Clause, were printed in a booklet and distributed, and a copy has been filed as Exhibit 234.

The contract remained in use until a new revision which was adopted in the United States as of May 1, 1928. This was considered by the directors of the Cooper Organization, apparently previous to its adoption in the United States, at a meeting on March 27, 1928, when a committee composed of Messrs. Cohen, Hague and Milligan were appointed "to go into the question of the New Standard Contract for Canada, and report back to a meeting of the Directors next week." On April 24, 1928, the President submitted a copy of the New Standard Exhibition contract with the necessary revisions to make same applicable for Canada, and a resolution was passed:

> "that the revised Standard Exhibition Contract, identified by the signature of the President of the Motion Picture Distributors and Exhibitors of Canada, bearing date June 1, 1928, be adopted by all Distributor members of this organization, to go into effect June 1, 1928".

The revised Rules of Arbitration as submitted by the President bearing date June 1, 1928 were also adopted at this meeting. The New Standard Contract is filed as Exhibit 240, and the Rules as Exhibit 243.

It is worthy of note that Exhibits 240, 241 and 243 are as printed in the United States, and the amendments thereon, made necessary to make them applicable to Canada, are made in handwriting; so that what happened was the adoption for use in Canada of the contracts which had been adopted for use in the United States. It should be noted, as appears by Exhibit 242, the Rules and Regulations relating to Arbitration had been revised in 1927 as of January 1. The 1928 Standard Exhibition Contract, and Rules of Arbitration, remained in use in Canada until May 15, 1930, when what is called the Canadian Exhibition Contract, Exhibit 239, was adopted and a new set of Rules of Arbitration, Exhibit 244, were also adopted, both of which have since been in use.

The modifications between 1926 and 1930 in the contracts and Rules of Arbitration were, in the main, obviously made with the object of rendering the contracts and arbitration proceedings more effective. There are, however, some minor modifications which are favourable to the exhibitors, and though it would not be profitable to discuss these alterations in detail, some of them will be mentioned incidentally in the discussion of the general provisions of the contracts. In the two earlier contracts the distributors represent that the contract contains all the provisions of the adopted form. The reason for this somewhat unusual provision is, the rules relating to arbitration provide that the Board of Arbitration shall not be obliged to entertain any claim or controversy, unless the same arises under a contract substantially in accord with the Uniform Exhibition Contract, and later the Standard Exhibition Contract (see Exhibit

234, Article II). By the contract the distributor grants to the exhibitor a licence to exhibit the photoplays mentioned in the contract, at the theatre or theatres designated, for the number of days specified, and the exhibitor agrees to pay a fixed sum specified, three days in advance of the date of shipment from the distributor's exchange or from the last previous exhibitor of the positive film.

2. PRICES AND PAYMENT ON PERCENTAGE BASIS

In the earliest contract, provision is also made for payment on a percentage basis. Where payment is made on a percentage basis, it obviously cannot be payment in advance, and as very few independent exhibitors are able to purchase on this basis (when they are, in most cases payment in advance of a fixed sum as a guarantee is required), and as Famous Players and their affiliations, except where such is impossible by reason of vaudeville being shown in their theatres, invariably purchase on a percentage basis, Famous Players have a distinct advantage over most of the independent exhibitors, not only by way of saving of a considerable amount in interest, but also by reason of the fact of distributors' salesmen not having to answer possibly awkward questions as to a comparison of the prices paid by Famous Players with the prices paid by independents for film.

A comparison of these prices is not always easy, by reason of the difficulty of selecting for comparison situations which are exactly comparable. There is, however, considerable evidence from which it is a fair conclusion that Famous Players do pay less than independent exhibitors. A very striking example is per Exhibit 298, supplied by Mr. Freeman, the manager of the Carlton theatre on Parliament Street in Toronto, and Exhibit 299 supplied by Famous Players, relating to certain bookings at the Parliament theatre, and the Palace theatre in Toronto.

The Parliament theatre is the immediate competitor of the Carlton, on the same street and within a block or two of it, and the Palace being a much larger theatre in a better location. The total film rentals for the five weeks period from January 10 to February 13, inclusive, for the Carlton were $2,107, and the total film rentals paid by the Parliament (a Famous Players house) for the five weeks from January 12 to February 14, were $1,560.99. The slight difference in the period is accounted for by the fact that one theatre changes its program on Saturday and the other on Monday. This means that the independent house was paying during this period over 30 per cent more in film rental than was paid by Famous Players in their Parliament theatre, and this notwithstanding that the Carlton theatre charged a higher admission price, and that during the period the Parliament for four out of the five weeks had three changes of pictures a week, whereas the Carlton had but two changes a week throughout the period. Further the Carlton was not enjoying any policy of protection, while the Parliament was. The feature pictures shown in the Carlton during the period under review came from United Artists, First National, Columbia, Tiffany and Regal Films Ltd. The features shown at the Parliament came from Famous Lasky, Columbia, Regal Films, Vitagraph and Universal. As compared with the prices paid at the Palace theatre, "Africa Speaks", a Columbia picture, played at the Carlton on January 17, 19 and 30, and paid a rental of $233.75. The same picture played at the Palace on January 10 and 12 and paid $182.13 film rental and $16.50 score and trailer charge, a total of $198.63. The Palace has over 1,500 seats as against the Carlton's 1,000.

Here attention might be again directed to a letter, May 7, 1929 from Mr. H. L. Nathanson, Manager Regal Films Ltd., to Mr. K. M. Leach of the Strand Theatre, Calgary:

> "There are no such terms as 15 per cent for any independent house in Canada, and the 15 per cent arrangement is made by the Producers with the Famous Players 100 per cent owned Theatres, or with their affiliations."

On May 20, 1930, Mr. Sichelman wrote Mr. O'Loghlin, General Manager Fox Film Corporation Ltd., in part as follows:

> "You wrote on April 28 advising percentage terms for two more of the Famous Players Canadian Corporation namely, Capitol theatre, Kamloops, B.C., and the Empress theatre, North Battleford, Sask.
>
> "We note the terms quoted are straight percentage arrangement, whereas, according to our records, we previously sold these theatres when owned independently contracts on flat rental basis."

On April 5, 1927, Mr. J. A. Wilson, Branch Manager Fox Films, Winnipeg, wrote to Mr. J. R. Grainger in New York in reference to Port Arthur, Fort William, Regina, Winnipeg, Brandon, Moose Jaw and Saskatoon Famous Players' houses:

> "The basis on which these houses play our subjects is certainly not conducive to what is necessary from these centres to lift our business out of the mediocre to a worth while standing. The difference is considerable, from week to week, from what we used to obtain from these centres. In the City of Winnipeg alone, there is a difference of approximately $400 to $750 on every picture played by them. In the Lyceum Theatre, prior to Nathanson taking over the booking thereof, we used to obtain from $500 to $2,500 first run. This year we have played two subjects in there—THE LILY and THE RETURN OF PETER GRIMM. On the former we received as our share $264.52 and on the latter $180.02. This is an example of the prices we are obtaining all through the territory from these theatres and it is evident that they are not sufficient to bring this office from mediocrity to a successful weekly revenue."

There is also evidence that Bloom and Fine hinted on several occasions to independents that since they had entered into an operating agreement with and become affiliated with Famous Players, they were able to buy their product much cheaper.

A detailed comparison of prices would involve an exhaustive detailed study, and in view of the fact that it is claimed that Famous Players ought to be able to buy more cheaply, because of their greater buying power, it did not seem to me that there was anything to be gained by going into the matter in detail.

3. PROTECTION

The seventh clause in the 1926 contract, the sixth clause in the 1928 contract, and the fifth clause in the 1930 contract, provide for protection, the distributor agreeing not to exhibit or license the exhibition of any photoplays in conflict with the "run" or "protection" period, if any in the schedule specified, and provision is made for protection against all theatres in the immediate neighbourhood or vicinity of the exhibitor's theatre, where such intention is indicated in the contract. In the 1930 contract the protection is given as against any theatre that may hereafter be opened in such neighbourhood or vicinity.

In the earliest contract the protection period is computed from the first date of exhibition of each photoplay. In the 1928 and 1930 contracts, it is computed from the last date of exhibition of each photoplay.

4. DELIVERY AND RETURN OF PRINTS

The eighth clause in the 1926 contract, the seventh clause in the 1928 contract and the sixth clause in the 1930 contract, deal with delivery and return of prints. The 1926 clause provides that the distributor agrees to deliver to the exhibitor a positive print of each photoplay in time for exhibition on the dates specified or determined, as provided in the contract, and that delivery to the exhibitor at the Distributor's Exchange, or to a common carrier or to the Canadian postal authorities for mailing, or to any agent of the exhibitor, shall be deemed delivery.

In 1928 provisions were added to the effect that all deliveries, other than at the Distributor's Exchange, shall be made in time to enable the carrier, in accordance with the carrier's time schedule, to deliver to the exhibitor, or at his theatre, at least one hour before the usual time for the opening of the theatre. The exhibitor agrees to return each positive print, with the reels and containers, to the exchange or the distributor, or as otherwise directed by the distributor, immediately after the run, in the same condition as when received, excepting reasonable wear and tear. The exhibitor agrees to pay cost of transportation from the exchange, or the last previous exhibitor, and return to the distributor's exchange, or if directed, to ship elsewhere transportation charges collect. Delivery to a carrier designated or used by the distributor constitutes the return. It is also provided that if the exhibitor fails to or delays the return, or fails to forward, or delays forwarding to any other exhibitor, the exhibitor agrees to pay the distributor damage caused to the distributor, "and in addition the damage if any, so caused such other exhibitor as shall be determined by arbitration, as provided for in Article eighteenth thereof".

In the 1928 rules of arbitration (Exhibit 243) it is provided in rule 5, paragraph 2, that if in a controversy in which a claim is made against a distributor for failure or delay in delivery, the distributor's defence is that the delay was caused by the failure or delay of any exhibitor in returning the print, or in forwarding it to the complaining exhibitor, the Board of Arbitration shall postpone the hearing and direct that such other exhibitor be brought in and made a party thereto. If the Board finds that the complaining exhibitor is entitled to damage, it shall make an award in favour of such exhibitor against the distributor, and if it finds that the failure or delay was caused by such other exhibitor, the Board at the same time shall make an award in favor of the distributor against such other exhibitor for the same amount of damages awarded against the complaining distributor. This rule is perpetuated in the 1930 revision.

5. Assignment of Contract

The thirteenth clause in the 1926 contract, the eleventh in the 1928 contract, and the tenth in the 1930 contract, deals with the assignment of the contract. It provides that the contract shall not be assigned by either party without the written consent of the other party, but that if the exhibitor sells and disposes of his interest in the theatre, he may assign the contract to the purchaser of such interest without the written consent of the distributor—"and such assignment shall become effective upon the written acceptance thereof by the assignee, such assignment, however, shall not relieve the exhibitor of liability thereunder unless the distributor consents in writing to release the exhibitor from liability". This clause remains the same throughout.

6. Selection of Dates

This is dealt with by the ninth clause of the 1926, the eighth clause of the 1928 and the seventh clause of the 1930 contract. Where no date is set by the contract for exhibition of the picture, which naturally cannot be the case where the contract is for a block of pictures, of which the release dates are not then known, quite an elaborate system is provided for the selection of the play dates, or the actual booking of the pictures.

The distributor, in the earliest contract, is to give fifteen days notice of the date upon which each photoplay will be available for exhibition by the exhibitor "consistent with prior 'runs' and/or 'protection' heretofore or hereafter granted to other exhibitors." The exhibitor is required within fourteen days after the mailing of such notice, to select the exhibition date or dates, within the four weeks' period, commencing with such date of availability, by written notice to the distributor. If the exhibition date or dates selected by the exhibitor are not available to the exhibitor, then if other dates within said four weeks period are available "the exhibitor shall immediately select from such other available dates another day, or other dates, failing which the distributor shall designate the date or dates by mailing two weeks notice thereof to the exhibitor, but such date or dates so designated shall not be fixed earlier than two nor later than six weeks from the exhibition date first selected by the exhibitor. If no other dates within the four weeks period are available, the exhibitor is required to designate the dates by immediately giving written notice to the distributor-"but such date or dates so designated shall not be fixed earlier than two, nor later than six weeks from the last day of the four weeks' period." If the exhibitor does not so immediately designate, the distributor has the right to designate the dates within the period specified by two weeks' written notice.

Provision is also made for further selection of dates by the distributor, if the exhibitor does not comply with the above requirements, and it is also provided that if the exhibition dates are designated by the distributor upon the failure of the exhibitor to make selection within fourteen days of the mailing of the notice of availability, the protection period is to begin upon the day after the expiration of the four weeks period above mentioned, provided that after the dates of selection, or designation, they shall for all purposes be the exhibition date or dates, as though definitely specified in the contract. It is also provided that in case the contract embraces a series of feature photoplays, and featuring a particular star or director, the exhibitor shall not be required to exhibit more than one photoplay of such series every five weeks. Exhibit 254 contains an elaborate analysis of this clause, which is too long to quote here, and reference to which may be made if desired. In the 1928 contract, the clause was somewhat rearranged and provision was made that the notice of availability is ineffectual unless a print of the photoplay is, at the time of the notice, in the exchange from which the exhibitor is served. The importance of this notice of availability to the distributor is that it is a prerequisite to most claims under the arbitration clause in the contract, and reference has been made heretofore to the steps which were taken to advise the distributors that the notice must be properly given.

In the 1930 contract, the periods are somewhat changed.

7. Minimum Admission Charge

Clause seventeen of the 1926 contract, and clause fifteen in the 1928 contract, provide that during the period in which each of the photoplays mentioned in the contract shall be exhibited the exhibitor will charge for admission to the theatre an actual admission fee which shall be not less than ten cents, "unless a greater minimum admission is herein elsewhere specified......and that such photoplays shall not be exhibited unless such admission fee is charged." This clause is omitted from the 1930 contract.

8. Advertising Accessories

The fourteenth paragraph of the 1926 contract, the twelfth paragraph of the 1928 contract, and the eleventh clause of the 1930 contract provide that "all advertising accessories used by the exhibitor in connection with the exhibition of said photoplays must be leased from, or through the distributor and must not be sold, leased or given away by the exhibitor."

9. Delay in Performance

Article eighteen of the 1926 contract, article sixteen of the 1928 contract, and article thirteen of the 1930 contract, deal with delay in or prevention of performances. In the 1926 contract, if the exhibitor is delayed in, or prevented from the performance of the contract in respect to any photoplay by reason of censor rulings, the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity or court order, then such delay or failure of performance is excused, and the time of performance is extended for a period equal to the time of such delay, unless performance is rendered impossible, in which case performance by the exhibitor is waived. Provided that if the delay or prevention of performance continues for three months, either party may cancel the contract, but only in respect to the photoplay in connection with which the specified delay exists, and in this case, there must be notice within ten days after the expiration of the three months period.

If the distributor is delayed in, or prevented from the performance of a contract in respect to any photoplay by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, court orders, censor rulings, delays of any common carrier, delays in production or failure of the producer to make delivery to the distributor, or of any star to appear therein in time for delivery, *or the failure or delay of any prior exhibitor in returning any positive print to the distributor, or in forwarding any positive print to a subsequent exhibitor, then such delay is excused, and all claims waived by the exhibitor.* The time for performance is likewise in this case extended for a period equal to the time of delay, unless performance is rendered impossible, in which case performance is waived.

It is further provided that if the delays should extend to three months, the contract may be cancelled in respect to any individual play, the delivery of which has been delayed, by written notice within ten days after the expiration of the three months period. The effect of this clause was that if an exhibitor were delayed by reason of the failure of any exhibitor to return or forward the positive print, he had agreed to proceed against the other exhibitor against whom, obviously in the long run, he had no legal basis of claim. This, however, was remedied in the 1928 contract, as pointed out by Mr. Gabriel Hess, on page 9 of Exhibit 254, by the omission of the part in italics above. The effect of this omission is that, if there is a delay of this character, the injured exhibitor has a claim against the distributor, and under paragraph 2 of rule 5 of the 1928 Arbitration Rules (Exhibit 243), he can bring the other exhibitor causing the delay before an Arbitration Board and obtain damages against him equal to those awarded the complaining exhibitor.

In 1928 there was a further change, by which neither the exhibitor or distributor would have the right to cancel the contract in respect to any play where the delay was for a period of three months. Under the new clause adopted in 1928, if the picture is not released within the distributors' releasing year, the exhibitor would have the right, upon thirty days' notice of the expiration of the releasing year, to require delivery of the product or failing to give such notice, the picture will be deemed eliminated from the contract. The exhibitor has the right to elect to take the picture even although not released within the releasing year or season mentioned in the contract, but if the picture, performance of which has been prevented, is not released within two years from the end of such releasing year, the picture is eliminated from the contract, even though the exhibitor has by notice elected to take it. Under the 1930 contract, the clause is very much shortened and simply provides that in the event of delay from the specified causes, both the exhibitor and the distributor are excused from performing the contract, and all claims are waived. In my opinion, the clause as now in force is quite unobjectionable.

10. ACCEPTANCE OF APPLICATION

When an exhibitor agrees to purchase a picture, he is asked to sign a standard contract, now the "Canadian Exhibition Contract," for each picture, and the distributor has a certain length of time in which to accept or reject this contract, which is called "an application for a licence," but is in reality, if accepted, a contract binding upon the exhibitor.

Paragraph twenty-two of the 1926 contract contains this provision:

> "This instrument shall be deemed an application for a licence under copyright only, and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the distributor, and notice of acceptance sent to the exhibitor as herein provided."

The article further provides that unless notice of acceptance is given by the distributor within thirty days in all cases (except Toronto, where the period is fifteen days), the application shall be deemed withdrawn, and any sums paid on account are to be returned to the exhibitor. The twenty-second clause of the 1928 contract makes similar provision, except that the period for the Calgary district is 35 days and for Vancouver district 40 days, and the periods are the same in the 1930 contract.

Exhibitors have complained that this is unfair to them, as it enables a salesman to peddle the contract or application, as it is called, with a view to obtaining from some other exhibitor a larger price. There must have been some such condition as this, for at the end of the 1926 contract there is printed in italics the following:

> "*Direction to Salesmen.*—While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms."

This same instruction is printed on the fly-leaf of the 1928 contract, with the addition of these words:

> "A violation of this instruction will subject you to discharge,"

and there is subjoined the following note:

> "This direction to salesmen shall be printed upon, but shall not be deemed a part of the Standard Exhibition Contract."

There is no such direction printed upon the 1930 contract.

11. ARBITRATION

The twentieth clause of the 1926 contract, the eighteenth of the 1928 contract, and the fifteenth of the 1930 contract, contain the contractual provisions in respect to arbitration. The only practical difference between the two earlier contracts is that the 1928 one definitely fixes the time within which the distributor must comply with an award against the distributor, it being determined by the location of the exchange.

The provisions in regard to the appointment of the arbitrators are somewhat unusual. These have been dealt with heretofore in this report. The clause in the contract provides that before either party shall resort to any court to determine, enforce or protect the legal rights of either one, each shall submit to the Board of Arbitration (established or constituted pursuant to the rules of arbitration filed with the Motion Picture Distributors and Exhibitors of Canada (Inc.) bearing date of June 1, 1928, and identified by the signature of its President), (Exhibit 243), in the city where is situated the exchange of the distributor from which the exhibitor is served.

The parties agree to abide by and forthwith comply with any decision and award of such Board, and consent that any such decision or award shall be enforceable in or by any court of competent jurisdiction pursuant to the laws of such jurisdiction " now or hereafter in force," and each party agrees to accept as conclusive the finding of facts made by any such Board, and consents to the introduction of such findings in evidence in any judicial proceeding.

The right to submit to arbitration is subject to disputes or claims or controversies arising under a Standard Exhibition Contract. The clause further provides that if an exhibitor shall fail or refuse to consent to submit to arbitration any claim or controversy arising under a Standard Exhibition Contract, or to abide by and forthwith comply with any decision or award of a Board, the distributor may, at its option, demand, for its protection and as security for the performance by the exhibitor of this and all other existing contracts between the parties, payment by the exhibitor of an additional sum not exceeding $500 under each existing contract, " such sum to be retained by the distributor until the complete performance of all such contracts and then applied, at the option of the distributor, against any sums finally due or against any damages determined by said Board of Arbitration to be due to the distributor, the balance, if any, to be returned to the exhibitor, and in the event of the exhibitor's failure to pay such additional sum within seven days after demand, the distributor may by written notice to the exhibitor suspend service hereunder until said sum shall be paid and/or terminate this contract."

The Cooper Organization, its distributor members, and general managers of distributors who are not members of the Cooper organization, adopted the principle that each distributor would " protect " the contracts of other distributors, meaning that if an exhibitor got into difficulties with one exchange the others would not deal with him except by " spot booking," and the unfortunate exhibitor, no matter how unjustly he may have considered himself to have been treated, was forced to comply with the award, or pay in $500 in respect of each contract he had with each distributor, or close his theatre. Thus the distributors, by means of this Arbitration Clause, read in conjunction with the rules of arbitration and through the Film Boards of Trade, took to themselves the means of enforcing their contracts, no matter how unreasonable, and of placing an exhibitor against whom an award was made at the mercy of the distributor party to the arbitration, with whom the other distributors had bound themselves to co-operate, and without giving the exhibitor any opportunity to have a court of law pass on the propriety of the award, which is usual in the case of practically all contracts containing arbitration clauses.

The provisions in respect to the distributor's failure or refusal to consent to submission to arbitration or to abide by or comply with a decision or award in the number of days specified, (namely: fifteen days under city contracts in Toronto, thirty days for the rest of the territory served from Toronto and from Montreal, St. John and Winnipeg, thirty-five days for the Calgary territory and forty days for the Vancouver territory) are that " the exhibitor may at his option terminate this and any other existing contract between the exhibitor and the distributor by mailing notice. . . and in addition the distributor shall not be entitled to redress from such Board of Arbitration upon any claim or claims against any exhibitor until the distributor shall have complied with such decision ".

Rule four of the 1928 Rules of Arbitration (Exhibit 243) relates to the enforcement of decisions and has to some extent already been dealt with, and it is only to be observed that the distributor under the wording of the rule is obliged to suspend service in the case of an exhibitor, the words being; " *shall* proceed to suspend service under each such contract until such exhibitor shall have furnished such security or complied with the decision of such Arbitration Board ".

It will also be recalled that the rules provide that the secretary of the Film Board shall notify each member and distributor of the names and addresses of each exhibitor and distributor who has failed to comply with an award, or in the case of an exhibitor making the deposit.

If the exhibitor were free to contract with a distributor to the extent that he could agree, or not agree, to this arbitration clause, and if under those circumstances the exhibitor signed the clause willingly, he could not perhaps complain, but the fact is, and I so find, that all of the distributors require all of the exhibitors to sign contracts containing this clause, otherwise they cannot get any pictures for their theatres, as the distributors, acting in concert under the direction of the Cooper Organization, refuse to sell otherwise than under this Standard Exhibition Contract, now Canadian Exhibition Contract.

It is worthy of note in this connection that there are many instances in the evidence showing that Famous Players have not, previous to the showing of a picture, signed any standard form contract, and that Famous Players have been in default under their contracts, and that bitter complaint has been made of this by exchanges from time to time as to its "delinquent position". I find no instance from the evidence before me where they have been forced to arbitration, although on one occasion Mr. Grainger of the Fox Film Corporation, New York, urged the Canadian Manager to take such action. There is one possible exception to this, which appears on pages 7002-3 of the evidence, in respect to an arbitration in North Battleford, but Mr. Masters of United Artists, who gave the evidence, was not clear as to whether Famous Players had been a party to the arbitration or not, and on one occasion United Artists did enter action in the court against Famous Players. This was in connection with the Marshall case in North Battleford, and was settled (Evidence, p. 6980 *et seq*). No deposit was required from Famous Players, but apparently some court proceedings were taken based on the award.

I also find that by their actions in connection with arbitration under this clause, the distributors and the Cooper Organization have contributed very materially to the influence and strength of Famous Players in competition with the independent exhibitors, and this actually to the public detriment.

Clause eighteen in the 1928 contract is substantially the same as article twenty of the 1926 contract, and neither the rules nor the practice under them were materially altered until May 15, 1930, when the 1930 contract was adopted by the Cooper Organization, and, through it, by the distributors in Canada. This was an attempt to break away from the slavish following of the United States Arbitration Clause, and a new clause was drafted by the solicitors for the Cooper Organization, and is now clause fifteen of the Canadian Exhibition Contract. If the exhibitor were free to agree or not agree to this clause in the making of contracts for the purchase by him of pictures, and if the arbitration were impartially conducted, the clause as it now stands would, in my opinion, not be so objectionable, as it provides simply that all differences arising out of, or connected with, the subject matter of the agreement shall be referred to arbitration. This, however, is subject to the rules of arbitration adopted at the same time (Exhibit 244).

The constitution of the Board is somewhat different than under the earlier contract. A Board now consists of two members, one of whom shall be a member of the Film Board of Trade, and one of whom shall be a proprietor or a manager of a theatre in the territory where the arbitration is to take place. The Film Board of Trade names a panel of three of its members and each local exhibitor's association a panel of ten exhibitors, and if no local exhibitors' association or if such association fails to name such panel, the President of the Film Board of Trade requests the Mayor or other chief executive of the city to name the said panel of ten exhibitors' representatives. The two arbitrators are chosen by drawing one name from each of the respective panels and, if any representative so chosen by the secretary fails to act, the secretary may appoint his successor in the same manner, and, in case the two arbitrators fail to agree they shall appoint a third If unable to appoint a third, the secretary of the Board requests the President of the Board of Trade of the city, or if there is none or he fails to appoint, then the Mayor or other chief executive officer to appoint a third arbitrator, who shall be neither a distributor nor exhibitor nor interested in the motion picture business.

This, it seems to me, is open to two serious objections:

(1) The distributor representative cannot in the nature of things be an impartial judge. I say this in view of the whole history of the Cooper Organization, the Film Boards of Trade and the Credit Committees, their primary object always having been to enforce their views as to their rights under the contracts.

(2) The exhibitor member of the Board may or may not be impartial and it appears to be very generally current among the independent exhibitors who have spoken of the subject of arbitration that they are very timorous about subjecting their rights to arbitration under the contract.

Another objection is that the exhibitors are not usually locally organized, and the President of a local Board of Trade or the Mayor of the city, say Calgary, may have no knowledge as to the proper kind of exhibitor to place upon the panel. The evidence discloses that at the time of taking it, no arbitration has taken place at Toronto under the new clause and therefore I am unable to form any opinion as to how the arbitration to which it applies will be conducted.

Certain credit is claimed by the Cooper Organization for the change in this arbitration clause, but it appears that prior to the change, action had been taken against Paramount Famous Lasky Corporation et al, and a decision had been rendered in the District Court of the United States for the Southern District of New York, declaring that the Standard Contract then in force there, and particularly the Arbitration Clause, had been declared illegal under the Sherman Act. This judgment was subsequently affirmed on November 24, 1930, in the Supreme Court of United States, the opinion of the Supreme Court having been delivered by Mr. Justice McReynolds, in the course of which he makes this very pertinent statement:

> "The record discloses that ten competitors in interstate commerce, controlling sixty per cent of the entire film business, have agreed to restrict their liberty of action by refusing to contract for display of pictures except upon a Standard Form which provides for compulsory joint action by them in respect of dealings with one who fails to observe such a contract with any distributor, all with the manifest purpose to coerce the exhibitor and limit the freedom of trade".

He further says:

> "It may be that arbitration is well adapted to the needs of the motion picture industry; but when under the guise of arbitration parties enter into unusual arrangements which unreasonably suppress normal competition, their action becomes illegal".

Notwithstanding the difference between the Sherman Act and the Combines Investigation Act, this language seems appropriate to the situation in Canada.

The evidence of Mr. Horace Percy Redway as to his experience of arbitration under the contract is worthy of reference. Mr. Redway is the owner of the Crown Theatre on Gerrard street, in Toronto. He operated the theatre until the spring of 1930, when a lease thereof was acquired by B. & F. Theatres Limited, in the result that Mr. Redway is no longer in the theatre operating business. He gave as his view (Evidence, p. 4971):

> "I don't approve of the standard contract, for many reasons. . . . I don't believe in the Film Board of Trade for one thing".

He has acted as an exhibitor arbitrator several times and he states he has never been brought up for arbitration in a case of his own. At page 4972 he states:

> "But I have noticed in the majority of occasions that the exchange end of it . . . . the exchange manager seemed to know all about the case. The exhibitors are picked out spasmodically, this one, that one, or the other one. They are notified to attend the meeting. They do. When they get there, half of them don't know what it is all about, and the discussion goes on and . . . . well, to me they seem a lot of yes men. They just listen to what this one says, and they listen to what that one says, and instead of being like an ordinary counsel who would get his witnesses together and tell his witnesses what they have got to do, and how they have got to conduct themselves—
>
> "Q. And what to say?—A. And what to say, is quite correct—these men go in there and they don't know what it is all about. They don't even know the case that they are going to sit and try.
>
> "Q. You think they are at some disadvantage, do you?—A. I certainly do.
>
> "Q. That is, you are speaking now of your own experience?—A. Yes, sir.
>
> "Q. Tell me, have you observed a feeling amongst the exhibitors that they are a little bit afraid to talk too strongly to the . . . . distributors?—A. Very much.
>
> "Q. What is the reason of that thing as you have observed it?—A. Well, that is getting something out of me that I don't know—that I feel I can't answer, but I will answer.
>
> "Q. I wish you would.—A. I am out of the business now and it can't do me any harm, and I really think that the exhibitor, instead of coming out openly and telling you what he thinks, he is afraid that when he goes to sign next year's contract, that the trouble that he caused or has been the means of causing will be held against him by the various exchanges which he does business with".

From the evidence and demeanour of some of the exhibitor witnesses, I formed the same opinion as that above stated by this witness. For example, see the evidence of the witness Lester (Evidence, p. 5067 *et seq*).

A further example of the attitude of the independent exhibitor to arbitration under the contract may be had from the evidence of Mr. Barney Mechanic, who had an arbitration with Regal Films Limited, which will be hereafter referred to. He was in Toronto the day when the matter was being arbitrated, but, though his case had merits, did not attend at the arbitration, for the reason set forth at page 4844 of the evidence, as follows:

> "I figured it looked to me like that ninety-nine cases out of every hundred was lost for the exhibitors; I thought—'When you are right you are wrong', so I thought I had better save time and not go there".

ARBITRATION IN THE STAPLETON CASE, OTTAWA

As an illustration of arbitration as worked out, we have in evidence the following Exhibit 276 in reference to a claim by Regal Films against Mr. Donn B. Stapleton of the Centre Theatre, Ottawa, a first run house. He entered into two contracts to play the pictures called "THE WIND", for $650, and "DIAMOND HANDCUFFS" a Metro-Goldwyn-Mayer production. The contracts were dated September 6, and were accepted on October 10 and 9 respectively.

Mr. Stapleton says in his evidence, starting at page 4798, that "THE WIND" was sold to him as a super-special feature, pictures supposed to be outstanding, and that he bought the other picture "DIAMOND HANDCUFFS" for $300, that he screened " DIAMOND HANDCUFFS " and did not consider it fit to play, and wrote the company that he would pay for it but that he would not play it. In regard to "THE WIND", he wrote the company and told them that he felt entirely different about that, as it was sold to him on misrepresentation, it was sold as a super-special picture, and turned out to be worse than an ordinary picture, and "I thought that the least they should do would be to allow me to apply that or a certain percentage of that rental price in playing other pictures." On January 30, 1929, Mr. Stapleton wrote Mr. Burnett, Secretary of the Toronto Film Board of Trade, explaining this situation and stated: "If Regal Films are inclined to give us some concession on this and allow us to take this amount of rental out in some manner, we should be pleased to do so." On the 1st February, 1929, Mr. Hayner, who sold the pictures to Mr. Stapleton wrote him saying that these two pictures had been proven a box office attraction, but that if Mr. Stapleton would play the picture " and, in the event that it does not give you equitable returns in comparison to your rental, I, from my end, will endeavour to have Metro-Goldwyn-Mayer make an adjustment." Mr. Hayner advises on February 28, 1929, that he had taken the matter up with Mr. Nathanson and that Mr. Nathanson could not get Metro-Goldwyn-Mayer to agree to any substitution or adjustment in either instance.

"THE WIND" played at a second run theatre in Ottawa on March 1 and 2, and on March 1, Mr. Stapleton, through his company the Centre Amusement Co., Ltd.. wrote Regal Films acknowledging receipt of the letter of February 28 and instructed them to send the advertising matter for "THE WIND" and agreeing to play the picture on March 23.

On March 7, Regal Films, by Mr. O'Connor, Branch Manager, wrote to Mr. Stapleton that the advertising matter had been forwarded and play date of March 23 confirmed: "This was without prejudice to our existing status with you in connection with your failure to run this picture on the original contract dates."

He further says:

> "We are glad to know that you have taken a sensible view of the matter, as we having carried out our obligations and shipped you for the dates called for by the contract and your refusal to run same as per the terms of the agreement, would have made it embarrassing to you had the matter been brought before the Joint Arbitration Board.
>
> "Without prejudice, of course, to our rights, we did make our best endeavor towards getting a different settlement of the matter—but—as we have already reported to you—we were unsuccessful in our efforts."

On March 19, Mr. Stapleton wrote to Mr. O'Connor of Regal Films, in part as follows:

> " For the past seven days we have been advertising the picture 'WIND' which we have booked for week commencing March 23rd.
>
> "We have had it called to our attention on numerous occasions by our patrons that this picture already played Ottawa and on enquiry we find that this picture played the Avalon Theatre on March 1.
>
> "Cannot understand why you did not advise us of this fact, as we certainly cannot play a picture after the Avalon.
>
> " It would now appear that the 'WIND' was advertised, and booked at the Avalon Theatre while negotiations were pending between Mr. Hayner and myself. Under these circumstances we certainly do not feel responsible in any way for this picture. Our contract calls for first run in Ottawa, and cannot understand just why you would book this picture in second run. We are therefore arranging this afternoon to play another picture for week of March 23rd."

Regal Films wired a reply stating that they were shipping as outlined in the letter of 7th instant; this was on March 21.

Mr. Stapleton evidently had confidence in Mr. Hayner, for on May 17, after receiving notice that the matter was again before the Arbitration Board, he wrote to Mr. Burnett, requesting that Mr. Hayner be present at the hearing on May 21. He states in his evidence that both he and Mr. Hayner were present but that Mr. Hayner denied absolutely his statement as to the representations as to the picture. Under these circumstances there was an award against Mr. Stapleton, or the Centre Amusement Co., Ltd., of $957.90, being the rental price of the two pictures and express charges.

Mr. J. L. Hunter, Manager of Famous Lasky Film Service Ltd., was a member of the Arbitration Board, and in view of the control by Paramount Publix, and the fact that Regal Films, similarly controlled, was a party to the dispute, would have, for the sake of appearances, if nothing else, precluded Mr. Hunter from sitting on this Board.

Mr. Stapleton on May 28, asked for a re-hearing and on June 11, Mr. Burnett wrote him asking for his reasons for asking for a re-hearing, and also asking him to set forth what evidence it was his intention to offer. On June 20, Mr. Stapleton wrote Mr. Burnett setting out his reasons, which were statements that "The Wind" had been sold to other theatres at a very much reduced price, as compared with the price of previous Gish pictures, and stating that all reviews of the picture proved that it was far below a special, and asking for Regal Films to produce their gross rentals on "The Wind" in comparison to any of the Gish pictures recently released.

Previously, on June 18, Fox Film Corporation, Canadian Educational Films, Ltd., United Artists Corporation Ltd., and Canadian Universal Film Co., Ltd., wrote Mr. Stapleton demanding $500 deposit and subsequently, on June 25, these distributors wrote the exhibitor that because of his failure to pay the $500 deposit, service for his theatre had been suspended. In addition, Mr. Hunter of Famous Lasky Film Service Ltd., although he was not entitled to do so because of the fact that he had no contract with Mr. Stapleton, wrote a similar letter, stating that Famous Lasky had suspended service. Mr. Stapleton was compelled to, and did pay these deposits with the exception of the one demanded by Famous Lasky and in his letters enclosing cheques, states that he is making this payment under protest; "but your demands are such that we cannot afford to allow the Centre theatre to be closed on June 29, and we are simply paying this in order that we may remain open, and continue in business."

These cheques for $500 were sent on June 27, and on July 17, Mr. Stapleton was notified by Mr. Burnett "that the Board of Arbitration at its July meeting decided, after reviewing all the circumstances of the case, and reading your various letters, that they would not reopen the hearing of the above claim." Mr. Stapleton finally had to pay the amount of the award, and, on payment, the $2,000 which he had paid as deposits were returned to him.

Mr. Stapleton impressed me very favourably in the witness box. The statements made by him under oath remain undenied either by Mr. Hunter or any other witness.

VERBAL PROMISES

All of the contracts contain the clause: "No promises or representations have been made by either party to the other except as set forth herein."

ARBITRATION IN THE MECHANIC CASE, WINDSOR

Another illustration of how the arbitration boards are conducted is the case of Bernard Mechanic, who owns the Temple theatre in Windsor and books for the Regent and the Sandwich theatres, all three theatres being second run (Exhibit 269).

Mr. Mechanic does business under the name of Mechanic Theatrical Enterprises. He made contracts with Regal Films, with a salesman called Lighstones, for the pictures "Ben Hur" and the "Big Parade". He bought altogether fifty-nine pictures and for two days run at each theatre. His policy was three changes a week. The salesman however, is said to have stated:

> "If I will give you the contract for 6 days, 3 for the Temple and 3 for the Regent, and that makes 6 days, does that make any difference to you," and I said "not at all."

He states it was absolutely understood that although the contracts called for 3 days in two theatres the two pictures were to be allowed to run 2 days each in three theatres.

On February 5, 1929, Regal Films entered a claim against Mr. Mechanic in respect to the showing of the picture "Ben Hur", alleging that on October 12, 1928, they had entered into a contract with Mechanic for this picture at the Temple theatre, in Ford City, and the Regent theatre, Windsor, to play at the former theatre January 21, 22 and 23 and the latter on January 24, 25 and 26, 1929, and that the exhibitor played it in the Sandwich theatre on January 25 and 26, without Regal Films' permission and authority; and that on January 25, 1929, Regal Films mailed Mr. Mechanic a statement for $75.00 for an unauthorized run in the Sandwich theatre, which was refused. They therefore claimed $75.00 and the same kind of a claim is made at the same time for the picture "Big Parade", the claim being for $50.00.

On February 9, Mr. Burnett as secretary of the Joint Board of Arbitration gave Mr. Mechanic notice of these claims. On January 11, 1929, Mr. Mechanic had written Regal Films telling them of the arrangement with Mr. Lightstones and saying that the agreement was witnessed by five people. On January 25, Regal Films wired Mr. Mechanic:

> "We are again advising you as in the case of Big Parade if you play Ben Hur in your Sandwich theatre you are doing so against our wishes and without a contract and we will hold you liable in the matter."

On February 16, the Film Board of Trade was written to asking that the matter be held until Mr. Mechanic who was out of town could forward his defence. Affidavits were furnished by Mr. Mechanic, Jean Miller, Morris Harris, Rose Mechanic, B. H. Mechanic and Albert E. Sutton, all of whom swore that the agreement with Mr. Lightstones was as stated by Mr. Mechanic: that the pictures were to be produced at each of the three theatres for a period of two days, that Mr. Lightstones produced two contracts for a period of three days each at two of the above named theatres, and that upon Mr. Mechanic refusing to sign, explained that the two contracts for three days each covered the six day period required by the Mechanic Theatrical Enterprises for the production of the said pictures in the three theatres above referred to. The affidavits also stated that Lightstones said that it was immaterial to the principal of Regal Films Co., where the pictures were exhibited during the term of the contract.

The award was made on May 21, 1929, and is by the same board as decided the Stapleton controversy. Incidentally it might be remarked that Mr. W. H. Mitchell, a member of the Board, was Branch Manager of R. K. O. Distributing Corporation of Canada Ltd., with whose United States parent company Famous Players has a joint venture known as the Radio-Keith-Orpheum (Canada) Ltd. The award was made against Mr. Mechanic in each case for the amount claimed and the sum of $200 was fixed as the maximum amount that each distributor, a member of the Toronto Film Board of Trade, having a contract with the exhibitor might demand, pursuant to the provisions of the Arbitration Clause contained therein, as security for the performance by the exhibitor of each such contract.

On June 17, 1929, Mr. Burnett sent to each exchange the following memorandum:

> "The following exhibitors have failed to comply with the respective awards made against them by the Board of Arbitration or have refused to submit to arbitration a controversy arising out of their respective contracts with distributors. Under the Rules of Arbitration you are to demand security for the performance of each existing contract with these exhibitors. The amount of security to be demanded by each distributor shall be based upon the actual value of any print to be delivered under each such contract, plus the rental value of such print, the total amount to secure performance of any one contract not to exceed the maximum amount in brackets below.
>
> "*First Letters* (Demanding security) to be dated June 18, 1929.
> Regal vs. Centre Amusement Co., Ltd., Ottawa ($500).
> Regal vs. B. Mechanic, Temple Theatre, Ford ($200).
> Regal vs. W. N. Lannin, Lannin Theatre, Winchester ($150).
> Regal vs. T. E. Hyland, Regent Theatre, Campbellford ($150).
>
> "*Second Letters* (notifying of suspension of service) to be sent June 25, 1929 unless you are advised that exhibitor has complied with award."

On June 18, 1929, Canadian Universal, R.K.O. Distributing Corp'n. (Canada) Ltd., Fox Film Corporation Ltd., Vitagraph Inc., Famous Lasky Film Service Ltd., per J. L. Hunter, Manager, First National Pictures Inc., Canadian Educational Films, Columbia Pictures of Canada Ltd. and Regal Films replied that, as requested, they had sent the notice to Mr. B. Mechanic demanding a deposit of $200 each and stating also that unless the deposit was forthcoming a further letter would be sent to the exhibitor on June 25, notifying him that service is suspended.

On July 2, the memorandum as sent to the members by Mr. Burnett is as follows:

> "Confirming telephone conversation of to-day Second letter (notifying exhibitor of suspension of service under existing contracts) to be sent to the above exhibitor today and service suspended forthwith."

On July 16th, Mr. Burnett sent to the members a memorandum as follows:

> "Confirming telephone conversation of this date. This exhibitor has complied with Regal award and service may now be reinstated."

On page 4412 of the evidence, Mr. Burnett states that the affidavits above referred to were read to the Arbitration Board and put in as evidence, but he does not remember whether Mr. Lightstones gave evidence, and that there is no record of the proceedings. On page 4845 Mr. Burnett reiterates that the affidavits above referred to were before the Arbitration Board and his evidence is as follows:

> "Q. As I understand it, the position that the Board took was that they could not go behind the contract?—A. I cannot say how they arrived at the decision, sir.
>
> "Q. Were you not present?—A. I may not have been in the room at the time.
>
> "Q. But wasn't that the position?—A. I understand they upheld the decision.
>
> "Q. Because they could not go back to what occurred previous to entering into the contract?—A. Yes.

Mr. Mechanic under the notices was called upon to deposit a total of $1,800, and apparently rather than do this paid the amount of the award. Mr. Mechanic in his evidence before me reiterated the statements contained in the affidavits which were in evidence before the Arbitration Board, and there was no attempt to deny his statements as to the arrangement with Lightstones. Where Arbitration Boards take such a narrow view of a situation and refuse relief from a contract which has been induced by misrepresentation, relief which would not be denied in any court of justice, it is little wonder that the independent exhibitors have little faith in the justice which they are apt to receive at the hands of the Boards of Arbitration, set up under the Standard Exhibition Contract or the Canadian Exhibition Contract for the arbitrament of their disputes. It is also little wonder that great pains have been taken on the part of the United States producers and their subsidiary distributors in Canada, forming, as the latter do form, a constituent element of the Cooper Organization, and aided as they have been by Famous Players and some of their officers from time to time, to adapt and put into universal use in Canada the adaptation of the United States contract for Canadian leasing of motion picture films.

12. Arbitration in Great Britain

Reference was made in the evidence to the Arbitration Clause in the contract in use in Great Britain, which is a standard form of contract approved by the Cinematograph Exhibitors' Association of Great Britain and Ireland, Registered, and by the Kinematograph Renters' Society of Great Britain and Ireland Limited.

It is to be noted that the form of this contract is approved by two representative organizations, including a representative exhibitors association. The

Arbitration Clause is Clause 11 of this contract. The English contract is filed as Exhibit 238. Clause 11 in regard to Arbitration is as follows:

> "If any dispute save as to the recovery of simple debts shall arise with reference to this contract the same shall be referred to two Arbitrators, one to be appointed by the Kinematograph Renters' Society of Great Britain and Ireland Ltd., and one by the Cinematograph Exhibitors' Association of Great Britain and Ireland, and an independent umpire according and subject to the provisions of the Arbitration Act, 1889, if the theatre is in England and the Arbitration Scotland Act, 1894, if the theatre is in Scotland."

It is at once apparent that there are three fundamental differences in this clause and the clause in the Standard Form in use in Canada up to May 15, 1930. They are:

(1) That simple debts are not referable to Arbitration in the English contracts.

(2) There is no attempt in the English contract to place the enforcement of the award in the hands of one of the parties thereto and its associates.

(3) The method of the appointment of arbitrators is fair and one to which exception cannot be taken.

It is stated that the 1930 Arbitration Clause in the Canadian Exhibition Contract is drafted along the same lines as the contract in use in Great Britain and Ireland. A comparison of the two clauses, however, clearly shows that the two differences above, numbered (1) and (3), still remain; but in regard to the provisions for enforcement, while they do not appear on the face of the Arbitration Clause in the 1930 contract, it is questionable whether pressure can still be used to enforce awards, without having to have recourse to the ordinary procedure under Arbitration Acts, of having the award made a rule of court, whereupon the application for such objection may be taken.

XI. CREDIT COMMITTEE RULES OF THE FILM BOARDS OF TRADE

1. Statement of Rules

These, as amended to April, 1930, are contained in Exhibit 294. Rules as in force on June 1, 1926, are part of Exhibit 247 and have already been referred to, and there was a further revision on February 1, 1927, which is Exhibit 248.

Rule I provides that the President of each Film Board of Trade shall, with the advice and consent of the members, each month appoint a Credit Committee to serve for a period of one month and thereafter until their successors are appointed. Its objects are:

> "To eliminate and correct unfair, illegal and fraudulent trade practices and abuses in the motion picture industry arising out of the wilful repudiation by exhibitors of their contractual obligations without just cause or reason therefor, out of changes of ownership of theatres made for the purpose of avoiding uncompleted contracts for the exhibition of motion pictures thereat and to secure information of the credit responsibility of exhibitors for the purpose of lessening credit risks and to prevent frauds; and for the purpose of protecting the members of this Film Board of Trade against such and other unfair, illegal and fraudulent practices and abuses; and to promote fair and honourable dealings."

Under Rule II the Secretary of the Film Board of Trade shall be the Secretary of the Credit Committee.

Rule III provides for the reporting to the Secretary of the Credit Committee, by members, of information as to transfers of existing theatres and proposed operation of new theatres, and the recording of the information in a credit information statement.

Note.—For the first time the persons opening new theatres are brought under the operation of the rules, the two former sets of rules and regulations having referred only to sales and transfers of theatres.

Each member, on receipt of a credit information statement, is required to report to the Secretary in writing each existing contract with the theatre recorded as sold or transferred, with certain particulars.

Under Rule IV the Secretary is required, immediately upon the recording of a sale or transfer of an existing theatre or the proposed operation of a new theatre, by letter to request the new owner to forward to the Credit Committee within five days the information and references set forth in the questionnaire,

> "to enable the Credit Committee to report to the members upon the general reputation for honesty, financial standing, as well as the ability, willingness and aptness of the new owner to carry on the operations of the theatre acquired or proposed to be operated."

Under Rule V, if the new owner refuses or fails to furnish the information and references, the Secretary records such fact on the Credit Information Statement, using the letters "CIR", meaning "Credit Information Refused." The Secretary is further required to record for the Credit Information Statement the name of every theatre which upon investigation the Credit Committee concludes was sold or transferred for the purpose of avoiding, or being relieved of, uncompleted contracts of the transferor. Notation is to be used of the letters "FT," meaning "Transferred or sold to avoid existing contracts." The Secretary is required to indicate on the Credit Information Statement:

(*a*) Opposite the name of the new owner of any theatre which the Credit Committee have concluded was sold or transferred to avoid uncompleted contracts, and

> (*b*) Opposite the name of each new owner failing or refusing to furnish within the time specified the credit information and references requested; the percentage, not to exceed 25 per cent of the licence fees and an amount not to exceed $1,000 which the Credit Committee shall have fixed as a reasonable sum which each member shall require to be deposited in cash as security for the full and complete performance of each contract for the exhibition of motion pictures at the theatre of each such new owner. Thereafter each member shall require each such new owner to deposit in cash the said percentage and the said amount so fixed.

If the new owner agrees to assume and complete all the contracts of the prior owner, his name may be removed from the list, unless the Credit Committee decides otherwise.

Under Rule VII, " for a period of ten days from the date of the first appearance of the name of a new owner upon the Credit Information Statement. . . . the members of this Film Board of Trade shall not enter into any contract for the exhibition of motion pictures at any such theatre." Spot booking is permitted during the ten day period and until the Credit Committee have reported. After the Credit Committee has reported, the members

> " shall not enter into any contract for the exhibition of motion pictures at any such theatre unless the new owner shall have paid in cash to any member with whom such new owner desires to contract for pictures, the amount of security specified in the Credit Information Statement."

If the name of a new owner is on the list as having refused to furnish the information required, his name may be removed upon his so furnishing, and the members are then free to contract without security. Provision is made for the furnishing of information mutually between the members through the Secretary.

Rule IX (5) provides: " If the Credit Committee shall find upon such information so furnished that an exhibitor has made a practice of:

> (*a*) wilfully repudiating or breaching contracts for the exhibition of motion pictures, or
> (*b*) giving in payment of the licence fees of motion pictures checks which were returned unpaid by the bank upon which they were drawn, or
> (*c*) failing or refusing to pay the amount due for licence fees for motion pictures delivered open account, or
> (*d*) returning prints of motion pictures after the usual time for their return, or
> (*e*) returning prints of motion pictures in a damaged condition, or reporting prints as destroyed, lost or stolen, and refusing to pay for such damage of prints, or
> (*f*) failing or delaying to ship, pursuant to instructions, prints of motion pictures to other exhibitors, or
> (*g*) infringing the copyright of motion pictures, or
> (*h*) making false or fraudulent statements of the gross receipts of the exhibitor's theatre during the exhibition of motion pictures upon a percentage basis, or failing or refusing to furnish statements of such gross receipts, and the Credit Committee shall conclude for any one or more of such reasons that such exhibitor has been guilty of unfair, irregular or fraudulent trade practices or abuses, and is a bad credit risk,
>
> the Committee shall thereupon so report such exhibitor, together with the name and location of the exhibitor's theatre or theatres. Failing to reach such a conclusion the Credit Committee shall report such exhibitor to be a good risk"

This is new in the 1930 rules.

Rule X provides that any member of the Film Board of Trade is free to contract with any exhibitor reported to be a bad risk.

Under Rule XI members are required to furnish any information the Credit Committee may require.

By rule XII a fine is provided to be imposed on any member of the Film Board of Trade who violates any rule or wilfully fails to report to the Secretary the sale or transfer of any theatre of which he has knowledge, or wilfully refuses to furnish the information provided in paragraphs 2 and 3 of Rule IX.

These rules seem to have been adopted, according to the date at the end of Exhibit 294, on July 30, 1930, and it is worthy of note that in the meantime the case in the New York District Court in reference to the Arbitration Clause had been decided against the producer-distributor involved, and that in reference to the Credit Committee had been decided in its favour by Judge Thatcher, who tried the cases. It may well be that in view of the appeals in these cases, these rules were not put in force throughout Canada.

2. The Guest Case, Vancouver

An illustration of the operation of these rules and of the activities of the Film Boards of Trade and the Credit Committees appears in Exhibit 291 and the evidence relating thereto. In November of 1930 Mr. Frederick Guest of Hamilton, who operates theatres in Hamilton and Dundas, Ontario, was about to open a new theatre, the Stanley, which he had constructed in Vancouver, and as he considered his financial responsibility beyond question, he refused to submit to disclosing his affairs as required by a questionnaire sent to him under these rules by the Secretary of the Vancouver Film Board, Mrs. Viola Montgomery.

On November 27, 1930, Mrs. Montgomery wired to Colonel Cooper:

> "*Re* Rule four new credit committee rules stop Guest formerly Hamilton opening new theatre here positively refuses to furnish credit information or to sign questionnaire stop Shall we enforce Rule five parts one and three stop Please advise us immediately as under new rules no exchange can negotiate contracts until credit information is supplied. Regards."

Colonel Cooper wired to Mrs. Montgomery on November 28 as follows:

> "Guest's credit here A one and members have my permission to negotiate contracts with him whether he signs questionnaire or not stop You are at liberty to show this telegram to Guest for whom I have highest personal regard as man and exhibitor."

On December 2, 1930, Mrs. Montgomery wrote to Colonel Cooper confidentially, in part as follows:

> "I have your telegram of even date and have just read it to the President and have asked him to use his influence with the members to prevent them from acting too hastily. . . . . . I knew somehow that you would not approve of Mr. Guest being put on the Deposit List, especially in view of existing conditions and the troubles that they are having in the United States regarding the Credit Committee Rules. It was a very unpleasant meeting all around but ended up with all the members being good friends. . . . . . . A special meeting is to be called regarding the Guest Theatre. I am going to ask the members to submit their decision to you before doing anything drastic and I hope that they will listen to reason."

On December 2, Mrs. Montgomery telegraphed Colonel Cooper:

> "Please treat this wire confidentially members are very resentful *re* your decision regarding Guest, a special meeting being called matter is referred to in minutes. Letter following. Regards."

Colonel Cooper wired in reply on December 2:

> "Tell your members in view recent decision in States we are seriously considering returning to old credit committee rules which do not include new theatres."

There is a note in Colonel Cooper's handwriting on the copy of this telegram which was furnished to me, as follows:

> "Unknown to me Secs. have been told to retain old rules. Burnett informed me about this mistake of mine afterwards. J.A.C."

On December 4, Mrs. Montgomery wrote Colonel Cooper in part:

> "You will be glad to know that your second telegram regarding Mr. Guest's theatre had a magical effect. A special meeting was called this morning after the Credit Committee meeting and the decision of the Committee was endorsed by all the members . . . I did tell the members that I had written you telling you about the difficulties that we were having with some of the members about the Credit Committee Rules."

It is apparent from the above that had it not been that there is trouble in the United States over these Credit Committee Rules, and that it was uncertain whether the new rule bringing new theatres under their operation should be enforced, Mr. Guest would have been in the position of having to furnish the information required by the questionnaire, although as shown in Colonel Cooper's telegram his credit was "A one" and although he was a man of financial responsibility, or to have been forced to open his theatre without any contracts for pictures except such as he could spot-book.

3. Fox Film Corporation Correspondence

Further evidence of the attitude of at least one distributor to the question of the usefulness of the Film Boards of Trade, and, incidentally, the Credit Committee, is found in Exhibit 307.

On January 3, 1931, Mr. J. P. O'Loghlin of Fox Film Corporation Limited wrote to Mr. Sichelman of the Fox Film Corporation, New-York, in part:

> "There are some cases where it has been reported that the account is on the disapproved list of the Credit Committee. This no longer serves to prevent us from serving an account, as you have been advised.
>
> "I understand from the General Secretary of the Film Boards of Trade in Canada that, while the Credit Committee has been suspended in the United States, it is still operating in Canada, and he suggested that we take this matter up with you again before abiding by your instructions, as he informed us that if we took a contract from the Alexander Theatre, Kapuskasing, which is now on the credit list and on a deposit of $500 without getting said deposit from the exhibitor we would automatically become liable to a fine, and the contract so taken would not be protected by the Film Board.
>
> "Will you kindly give me a further ruling on this in so far as it applies to Canada and, in the meantime, our salesman will not call on this account until we are definitely advised by you."

On January 17, 1931, Mr. James R. Grainger, then Vice-president in charge of distribution of Fox Film Corporation, New York, wrote to Mr. O'Loghlin in part:

> "For the writer's own information, however, we wish you would at the earliest moment give us a confidential report indicating your attitude with regard to continuance of the Film Boards. Do you find the Film Board of any assistance to you in the proper carrying out of your exchange duties? Do you find it of any assistance to you in your contact with exhibitors?
>
> "Briefly, we want to know if the Film Board is of any value to you. Do you recommend that we continue the operation of the Film Boards, or do you recommend that we discontinue operation of the Film Boards? We want an expression from you as to whether or not any similar organization should be set up, or whether or not the successful operation of you exchange will in any way be impeded through elimination of Film Board activities. The contents of this communication is not to be discussed with any other person".

Note.—This is fairly conclusive as to the origin of the Film Boards of Trade.

Mr. O'Loghlin's reply on January 22, 1931, says in part:

> "Please be advised that insofar as Canada is concerned, my opinion is that the Film Boards should be continued. My reason for arriving at this conclusion is that, as you are no doubt aware, the system of arbitration and deposits still apply in Canada, and as long as this course is continued, the Film Boards are a great acquisition to us in keeping the exhibitors in line in fulfilling their contractual obligations".

4. FINDINGS REGARDING CREDIT COMMITTEE RULES

The Supreme Court of the United States, by a judgment of November 24, 1930, rendered by Mr. Justice McReynolds, reverses the judgment of Judge Thatcher, who decided the case in the District Court for the Southern District of New York, the result of the Supreme Court's decision being that these rules, which, from a perusal of the judgment, appear to be practically identical with the rules in force in Canada up to 1930 at least, were illegal under the Sherman Act. To quote from Mr. Justice McReynolds' judgment:

> "The definite point of attack in this proceeding is the agreement for the creation and operation of the Credit Committees and their use under prescribed rules to restrict freedom of sales by distributors and of purchases by exhibitors.
>
> "Ten producers and distributors of films, controlling 60 per cent of the business, agreed to contract with exhibitors only according to a Standard Form and then combined through thirty-two local Film Boards of Trade with other distributors, who with themselves control 98 per cent of the entire business. The Film Boards appoint Credit Committees and these operate under the rules above outlined. The obvious purpose of the arrangement is to restrict the liberty of those who have representatives on the Film Boards and secure their concerted action for the purpose of coercing certain purchasers of theatres by excluding them from the opportunity to deal in a free and untrammelled market".

In Canada, according to the evidence, the distributors party to this arrangement, being all the distributors named in the Order-in-Council, control at least 95 per cent of the distribution of films in Canada, and while, again having in mind the difference between the Sherman Act and the Combines Investigation Act, my conclusion is that the languague of Mr. Justice McReynolds aptly describes the situation here, and that these distributors, and the Motion Picture Distributors and Exhibitors of Canada, and Famous Players, through their association as aforesaid with the Cooper Organization, are a combine within the meaning of the Act, operating in this respect to the detriment of the public.

XII. COOPER ORGANIZATION—ACTIVITIES IN CONNECTION WITH SOCIAL ORGANIZATIONS

The Cooper Organization has engaged in a programme of propaganda with various social organizations, particularly women's organizations, with the idea of creating what to me appears to be a false idea of the objects and aims of this combination of producers, distributors and Famous Players.

That this has succeeded to a remarkable extent is evidenced by a letter quoted in memorandum to General Managers No. 10 dated February 8, 1927, attached to the minutes of the Motion Picture Distributors and Exhibitors of Canada for that year, which memorandum is as follows:

> "At the anual meeting of the Local Council of Women for Saskatchewan, held in Regina on January 24th, Mrs. H. L. Lovering reported for the Committee on Films, Amusements and Printed Matter. The following is an extract from her report:...
>
> 'I would like to call particular attention to the fact that the motion picture producers have appointed their own official censor, namely, Col. John A. Cooper. While we do not claim that it was the result of any one council's activities, it is the result of the activities of such organizations as ours that have awakened moving picture producers to a sense of their responsibilities in checking to some extent the evils in this modern form of entertainment, so fraught with possibilities for the elevation or degradation of our people. Col. Cooper is keeping a careful eye, not only on the pictures themselves, but also on the advertising of them. Of course, our censor boards are doing good work, but the motion picture producers themselves deserve credit for trying to keep the screen clean. The problem is a difficult one. Too often the public fail to recognize and patronize a good film. Several times the producers have sought to produce pictures suitable for children and have had to close the theatres because of lack of patronage. The motion picture is here to stay. It rests with us to see to it that it fosters desirable principles.
>
> 'It must be generally admitted we believe, that because of constant agitation, the motion picture is really improving, but we all fully realize the fact that we are far from the desired goal. No producer or manager cares to antagonize public opinion. They cater to that. It is our privilege to create that opinion, and assist them by denouncing the degrading, and patronizing the good.'"

Evidently Col. Cooper thought this letter of sufficient importance to impart its contents to the General Managers, and it is equally evident that he and they by that act are interested in the success of this propaganda.

It is almost amusing, if it were not pathetic, to learn that Col. Cooper had succeeded in convincing this good lady that he, employed and paid as he is by the United States producers, is standing between them and the public in the matter of censorship, when as a matter of fact his activities in regard to censorship and those of his organization have been directed towards a relaxation and criticism of the standard set up by the various Censor Boards in Canada; and so far as I observe from a perusal of all of the minutes of this organization, and of all the memoranda to General Managers, and of all of the correspondence submitted relating to the subject of censorship, I can find no case where he, or his organization, made any move or request towards having any picture censored. The files of this organization are replete with criticisms of the actions of Censor Boards, in cases where pictures were censored, and in the Province of Quebec a suggestion was made in regard to changing the personnel of the Censor Board, whose decisions were regarded as unsatisfactory.

In at least two cases, attempts have been made to acquire the services of members of Censor Boards, viz: Miss Alice Fairweather, a member of the New Brunswick Censor Board, who became "our representative in the Maritime Film Board" and Mrs. J. E. Hawkshaw, of the British Columbia Censor Board, who declined an offer of Col. Cooper for a similar position in British Columbia (see Exhibit 292).

In his letter of May 7, 1929, in which he offers the position to Mrs. Hawkshaw, and which was marked "Confidential", he states:

> "We know that you are able to make a speech and that you could talk to the various organizations and explain to them just what the situation is with regard to the various phases of our relations with the public. You could explain to them why we did not get more British pictures in this country than they have in England or Australia. You could also explain the methods adopted by the other Provinces to make children's pictures more successful, and you could act as intermediary in making the theatre owners more amenable to the desires of the public. I do a great deal of that work in Ontario, but Canada is too big a field for me to cover."

Mrs. Hawkshaw's reply declining the position was dated June 11, 1929, and is quite significant. It is in part as follows:

> "In reply to the purport of your letter I may say, however, that I feel that I am really not the sort of woman you are looking for, as my well known affiliations and interest in the British Empire Marketing Board. would hardly match up with what you want me to do."

In this connection, it is also interesting to note a meeting in the minutes of the Motion Picture Distributors and Exhibitors of Canada held on October 30, 1930:

> "National Council of Women.—The Annual Meeting of the National Council of Women was held at Niagara Falls last week with representation from all the provinces. Miss Alice Fairweather, our secretary at Saint John, was elected as a delegate from New Brunswick and attended the meetings. She co-operated with the National Cinema Committee, and, I believe, did very good work on behalf of the Industry. A resolution was passed asking for stricter censorship of vaudeville and motion pictures, but the stress of this Resolution was mainly against vaudeville and similar exhibitions."

In the minutes of the meeting of November 21, 1930, appears the following:

> "*Censorship—British Columbia.*—On the suggestion of one of the general managers a special report was sent to all concerned recounting the steps taken with regard to British Columbia censorship during the past year (circular #57). Hon. R. H. Pooley replies to our telegram of protest by saying that he still is getting a large number of complaints about the pictures passed by the Censor Board. The reports recently received from the secretary of the Film Board state specifically that censorship in British Columbia has been fairly satisfactory since the establishment of the Appeal Board, which in her opinion is less burdensome than at any time during the past year. At the same time she says there is no possibility of effecting any change in the attitude of Mrs. Hawkshaw."

XIII. LAURIENTE'S CASE, TRAIL, B.C.

The case of Antone Lauriente, the owner and operator of the Rialto Theatre in Trail, B.C., seems to require special mention.

Trail has a population of about 6,000 people, and the Rialto a seating capacity of 522. The only other theatre in Trail is the Liberty, with a seating capacity of 515, owned and operated by Amalgamated Theatre Company Limited, of which W. P. Dewees is in control. It will be recalled that since June of 1924 Mr. Dewees and his companies in British Columbia have been in close association with Famous Players in the control, the operation and the booking of pictures for a number of theatres in that province. These, however, do not include the Dewees theatres at Trail, Nelson and Revelstoke. Mr. Dewees in 1928 made contracts with every exchange doing business in British Columbia, except Vitagraph and F.B.O., containing cancellation clauses enabling him to cancel a very large percentage of the pictures contracted for and which, with the exception of the pictures that these two exchanges had sold Mr. Lauriente (Vitagraph 24, of which 8 were available in December of 1928, and F.B.O. 30, of which 8 were then available), gave Dewees practically control of the supply of positive prints in Trail.

On December 11, 1928, Mr. R. A. Scott, Local Branch Manager of the Canadian Universal Film Co. Limited at Vancouver, wired Mr. Clair Hague, the Canadian Manager at Toronto, advising him that Mr. Lauriente was in town with his attorney; that outside of the picture bookings from Warner or Vitagraph and from F.B.O., there was nothing available for him, and that they were threatening to take legal proceedings under the Criminal Code, charging the exchanges with conspiracy, and that the exchange attorney in Vancouver advises that the situation is very serious and "that we can easily become involved in costly litigation, and that if we have any product open for Lauriente and he is willing to pay for it, we cannot withhold same." He further says:

> "However to supply would put me in bad with Dewees. Therefore suggest meeting General Managers they all wire their branches to advise Dewees they cannot give him protection he is asking for all product he has not purchased for Trail. We must have quick action on this before it develops big trouble."

On December 12, 1928, Colonel Cooper wired Mr. F. Donnenworth, the Secretary of the Vancouver Film Board of Trade:

> "General Managers Universal, Paramount, Regal assure me they have plenty product and they are willing to sell to Rialto, Trail at same prices other theatres similarly situated."

suggesting that Branch Managers at Vancouver send letters to the owner of the Rialto, offering him such product as was available and that they should give Donnenworth copies of these letters. The telegram further says:

> "If any branch manager refuses to accept your suggestion wire immediately. Apparently no reason at this end why Rialto should not get all product it requires."

Apparently, Mr. Donnenworth had telephoned Colonel Cooper on the evening of December 11, and Colonel Cooper wrote to Mr. Donnenworth on December 12:

> "If there has been any combination to withhold pictures from the Rialto Theatre in Trail, that combination is not at this end."

On December 12 Mr. Donnenworth sent to Colonel Cooper a long telegram, reading in part:

> "Read your wire (Dec. 12th) at meeting branch managers but nothing accomplished except a lot of argument and evasion. This attitude apparently due to fear that first exchange defying Dewees will lose his business. . . . Lauriente's only bookings . . . Vitagraph . . . FBO . . . other exchanges told Lauriente nothing available this because of Dewees attitude. Dewees can only use one hundred fifty pictures per year at outside while total release . . . about five hundred. Exchanges position under circumstances ridiculous. Suggest as only solution that each head office ten exchanges send rush telegram immediately to local branch manager with explicit instructions to make available for Lauriente product in excess of Dewees actual requirements at Trail plus ten per cent addition for cancellations. . . . Situation calls for urgent action and there must either be showdown with Dewees or real trouble elsewhere. All contracts with Dewees and other arrangements in my opinion are invalid. . . . Should be definite action taken not later than thirteenth as Lauriente liable to start something."

On December 13 Colonel Cooper wired Mr. Donnenworth:

> "I have nothing to add my previous telegram. If branch managers will not accept my suggestion then further wires from this end would be useless."

On December 13 Mr. O'Loghlin wired from Winnipeg to Mr. C. R. Dippie, the local manager of Fox Film Corporation at Vancouver, as follows (Exhibit 309):

> "Have received following wire from Toronto quote Colonel Cooper says considerable trouble Vancouver among Vancouver Managers over Trail situation stop He suggests you wire Dippie to offer any unsold product we have to Rialto Trail as such offer would be good evidence in case of Government investigation unquote act according suggestion if does not conflict with our other deal Trail."

On December 13 Colonel Cooper sent a memorandum to general managers, No. 51, as follows:

> "Re Situation in Vancouver—Yesterday I took the liberty of sending the following telegram to the Secretary of the Vancouver Film Board of Trade:"
>
> (The above telegram is here quoted.)

The memorandum continues:

> "This morning I have a long reply from him saying that there was a meeting of the branch managers yesterday and that they were all afraid to accept my suggestion.
>
> "Under the circumstances I do not think there is anything further that I can or should do as it is really not an Association matter. I hope, however, that you will approve of the telegram as being a bit of evidence which might be useful if trouble arose."

On December 14, 1928, Mr. Donnenworth wrote to Colonel Cooper, explaining that the lawyer from Trail had called upon him, representing Mr. Lauriente, and "that Mr. Dewees controls the booking for six theatres in this province, including the Strand, Vancouver." His letter further says:

> "This lawyer alleged that due to the connivance of Mr. Dewees with certain exchanges his client, Lauriente, was being forced out of business as he had found it virtually impossible to obtain an adequate supply of pictures. The reason suggested for this state of affairs was that Mr. Dewees desired to eliminate Lauriente from the field in Trail and these exchanges were actively assisting him to accomplish this end by pretending that all their product for this town was under contract to Mr. Dewees or was not available.
>
> "I immediately investigated the situation and found that Mr. Dewees was apparently using his superior buying power to force the branch managers into line with his policy by threatening to discontinue booking with any exchange who supplied Lauriente.
>
> "Faced with the loss of bookings in six houses, every exchange, with the exception of Vitagraph and F.B.O., chose what seemed the lesser of the two evils and placed their entire season's product for Trail in Mr. Dewees' control exclusively. Vitagraph and F.B.O. were excepted from this arrangement apparently because Mr. Dewees had no desire to use their productions.
>
> "The modus operandi by which Mr. Dewees secured this monopoly was to contract, either verbally or in writing, for the entire season's product of an exchange

> with an express cancellation privilege of approximately fifty per cent. In this manner the season's output of the selected exchanges was tied up in such a manner that Lauriente had to depend exclusively upon Vitagraph and F.B.O. for a supply."

Mr. Donnenworth points out that as Dewees could use only 150 pictures in Trail, there would be at least 250, exclusive of Vitagraph and F.B.O. productions, which should be available for Lauriente, and continues:

> "The lawyer intimated that if the situation described above were not rectified, his client would be compelled to proceed against the exchanges involved and Mr. Dewees, under Section 498 of the Criminal Code.....
>
> "I regard the position of the eight exchanges involved as dangerous in the extreme, their arrangements with Mr. Dewees being obviously within the broad provisions of Section 498. Moreover, these arrangements are having the direct effect of practically forcing Lauriente out of business. The reason behind Mr. Dewees' activities is quite apparent, and the exchanges, in facilitating his purpose by unduly limiting the supply of pictures which under normal competitive conditions would be available to Lauriente, clearly bring themselves within the purview of the law relating to restraint of trade..... If proceedings were commenced it would prove rather expensive and damaging to the industry and might precipitate investigations in other centres..... At the time of writing I have the situation well in hand and there are lists going forward from seven exchanges offering considerable available product to Lauriente."

On December 20, 1928, Colonel Cooper wrote Mr. Donnenworth in part:

> "If this is true, then we have a very serious situation which should be investigated from New York. Not only are the managers liable under the Criminal Code, but they are guilty of a breach of the Code of Ethics agreed upon in the United States..... I shall investigate the situation further, but my present idea is that I shall ask New York to send a special investigator to Vancouver to look into all the circumstances of the case."

As early as February of 1928, as appears by Exhibit 342, Mr. Lauriente was evidently in difficulty, as appears by a letter, February 18, 1928, from Mr. Kenning, the local branch manager of Regal Films Limited, to Mr. H. L. Nathanson, the general manager at Toronto. This letter points out that the situation in regard to Dewees had been pointed out to Lauriente and he was thoroughly familiar with the policy of Regal Films in that town. The letter, however, does not say what this policy was. On April 2, 1928, Mr. Kenning wrote to Mr. H. L. Nathanson:

> "Mr. Dewees is still out of town, but I had a talk with Miss Drybrough (Mr. Dewees' secretary) this morning with reference to the playing of 'Men, Women and Sin' in the opposition house at Trail. Mr. Dewees had already turned down this picture 'His Review' stating that he did not want to run it in any of his theatres, and before going to Trail, I asked Miss Drybrough particularly, if she wanted to run this picture in Trail and she distinctly told me that they did not want the picture for that town. As you are no doubt aware, I took an early date on this picture so as to 'cinch' my contract with Lauriente, and Miss Drybrough complains that although they did not want to run 'Man, Woman and Sin' in Trail, we should not give the opposition house an early date on such a new picture..... In conversation with Miss Drybrough this morning, she tells me that it is her opinion that, if we sell one picture to the opposition in Trail Mr. Dewees would want for that situation, we would immediately be discriminated against any future bookings for any of his Theatres, including Vancouver and Victoria first runs. Of course this is very unfair, but I want you to have full particulars so that you will know the situation exactly."
>
> (NOTE.—The first runs in Vancouver and Victoria referred to that were then affiliated with Famous Players were the Strand, Vancouver and the Capitol, Victoria.)
>
> "All the pictures sold on the last contract to Lauriente were pictures passed up by Mr. Dewees with the exception of 'The Crowd', 'The Big City' and 'The Enemy'..... I know that Mr. Dewees will take very great exception to the sale of the one Chaney to the opposition..... Miss Drybrough although giving it only as her personal opinion, thought there was no doubt in the world that Mr. Dewees would make it very tough for me on account of this sale, and I would therefore ask your advice as to the best way to handle this situation."

On April 9, 1928, Mr. Henry L. Nathanson wrote Mr. Kenning:

> "Personally I don't feel that Mr. Dewees would do this as it is certainly too small a matter for him to take such a stand, and if he does, the only thing to do is to tell Mr. Dewees to go to the devil, as we certainly are not going to lose any revenue because of the fact that he might want to play one of the pictures bought by his opposition in Trail."

On April 23, 1928, Mr. Kenning wrote Mr. H. L. Nathanson:

> "With further reference to the situation in Trail, Mr. Dewees called me into his office on his return from California and he was very sore about our Exchange selling his opposition any pictures at all. I pointed out to him that even Mr. Nathanson himself allowed the Regal Exchange to sell his opposition in many situations, in fact gave some of them a fair split on the product."

On May 2, 1928, Mr. H. L. Nathanson wrote to Mr. Kenning:

> "At this time I might also mention that you seem very much worried about the situation in Trail. Please don't worry about it, as I can assure you it makes very little difference whether Mr. Dewees gets angry at our Company or not. The amount of business we get from him is so small that it means very little to our Canadian business..... There will be no further playing arrangement such as we have had during the past two years. Mr. Dewees will have to buy the pictures under contract the same as other exhibitors, otherwise we will not do business with him."

On May 9, 1928, Mr. Kenning wrote Mr. H. L. Nathanson:

> "I have just come back to the office from an interview with Mr. Dewees...... Dewees got very sore and told me that if we were going to supply his opposition in Trail, that he in turn would patronize our opposition Exchanges. He called Miss Drybrough and instructed her not to give me any more bookings in Revelstoke. Trail or North Vancouver...... and further stated that he would not use any of our pictures in the Strand unless he was sure they would make money for Mr (N. L.) Nathanson and himself."

On May 16, 1928, Mr. H. L. Nathanson wrote Mr. Kenning:

> "I must ask you again not to worry about Mr. Dewees' feelings in regard to Trail. We do not care whether he uses any of our pictures or not."

On July 4, 1928, Mr. Kenning wrote Mr. H. L. Nathanson:

> "Yesterday afternoon I was called in by Mr. N. L. Nathanson and instructed not to sell any product to the New Theatre in Trail, as he said it was his intention to bring Lauriente to time. I will therefore only see him in regard to dating the balance of his contract."

On July 9, 1928, Mr. H. L. Nathanson wrote Mr. Kenning:

> "I note Mr. N. L. Nathanson advised you not to sell any product to the New Theatre in Trail."

It will be noted that, following Mr. N. L. Nathanson's visit to Vancouver and his instructions given there to Mr. Kenning, as outlined in Mr. Kenning's letter, the situation developed until in December the correspondence previously noted above took place on the development of a situation which induced Lauriente, through his attorney, to make threats of legal proceedings. It will also be recalled that Mr. N. L. Nathanson was at this time managing director of Famous Players and also of Regal Films Limited.

The matter apparently simmered during the winter, for on January 8, 1929 (Exhibit 336), Mr. Dewees wrote the Vancouver Exchange of Canadian Universal Film Co. Ltd.:

> "You will remember some time ago we entered into certain contracts with your company for supplying films to our theatres in various towns where we are located in British Columbia. You will also remember that these contracts were entered into with the understanding that we were to have the exclusive use of your product in Trail, Revelstoke and North Vancouver. I understand now that your Company does not think it advisable to carry out this arrangement insofar as Trail is concerned, therefore, inasmuch as the understanding included that town, I feel that I am justified in asking you to cancel all contracts and arrangements entered into at that particular time. Will you please let me hear from you in regard to this matter."

On February 4, 1929, Mr. R. A. Scott, Manager of Canadian Universal Film Co. Limited at Vancouver, wrote Mr. Clair Hague of the Toronto office:

> "The Trail situation is really the reason this letter was written; He is sore because we supplied this party in Trail with one or two pictures. It is true that I agreed to give Dewees exclusive service; however, what I meant was exclusive on 1928-29 product. Now, he claims that it was his impression that this exclusive service was on everything, and he thought that was also my understanding. The reason I am particularly stating this is because I told him at the time of drawing up the contracts that I would not enter into this arrangement in the contract for the simple reason that I did not think it would be good for either party to have such an agreement in writing in existence....
>
> "I had an idea that he was probably bluffing me a little, so after a very straightforward talk, which lasted about three hours, I said—'Now, Mr. Dewees, if you are serious, and I surely believe you are, the only thing for me to do is step right on the train and go down and sell the opposition in Trail our entire product, who, by the way, when he was here offered me $6,600 for our entire output. Now, if this man can offer me a figure of this size for Trail, I feel that I can make up the balance of your contracted business over the circuit without injuring myself a great deal, same amounts to $8,000 or thereabouts. Bear in mind I am not saying this with any malice to independency, inasmuch as I want your business and our firm wants your business, but we want to take it within the Law, and I am informed by the Secretary of the Hays Organization that we are duty bound to give this man product, providing our books show it is actually available, and not wanting to get our firm into a law suit or not wanting to get the entire industry into a serious investigation, I thought it better to give him one or two pictures and eventually he will sign up with some other company and we will not be involved.'
>
> "However, Dewees remarked: 'I felt that in buying exclusive down there I bought all your product, and I bought it with the sole object in view of closing off the opposition, and when it does not accomplish this, I do not want your product.'"

The letter states that Mr. Dewees talks about cancelling, and it continues:

> "Between you and I, Clair, I think he is bluffing."

On February 11, 1929, Mr. Hague wrote Mr. Scott:

> "In reply to your letter *re* Dewees, if Dewees is really sincere as mentioned in your letter, and he is cancelling our product out of his circuit on account of you supplying two or three features in Trail of last year's product, I am going to see the matter is brought up before the proper parties.
>
> "We have perfectly legitimate contracts with Mr. Dewees and he will either play or pay for them. If Mr. Dewees will take the matter up with Mr. Nathanson, he will understand the reason that it is impossible to refuse to supply product which is open of last year's product. I understand thoroughly what he is trying to do, and our Company will not be a party to any such arrangement. If he will check up some of their own companies, he will also find some of the product has been sold in Trail."
>
> NOTE: The reference to their own companies is probably Famous Lasky and Regal Films—(see Mr. Clair Hague's evidence, pages 7120 and 7121).

On March 15, 1929, Mr. Scott wrote Mr. Hague:

> "In a round table conference with the Exchange Managers, Jack Marshall of Famous Players was very emphatic that he was going to supply this man and I have found out since that he has no contract with Dewees, nothing but a verbal agreement."

On March 28, 1929, Mr. Scott wrote to Mr. Hague:

> "You undoubtedly have all the correspondence that I have written you pertaining to Mr. Dewees and his desire for cancellation of our contracts. He has now, as I told you in a previous letter, decided to give us all dates and his secretary phoned this morning saying Mr. Dewees would like to have a reply to his letter inasmuch as he is going east and wants to take the matter up with you or Mr. Nathanson on his arrival. I informed his secretary that I had forwarded you a copy of all the correspondence some time ago and that any action I had taken in this respect had been done solely on the instructions of our Home Office in New York, also that Mr. Nathanson was fully aware of the entire situation, and she politely replied that Mr. Nathanson had nothing to do with the situation in Trail and for that reason they were not concerned regarding his actions or opinions."

On April 25, 1929, Mr. Scott wrote Mr. Hague:

> "Now, if we are going to sell product in Trail and Victoria, I must have an immediate decision from you as to what we are to do".

On May 23, 1929, Mr. Hague wrote Colonel Cooper:

> "In reply to your recent letter, we have sold Dewees in Trail 27 features, 10 two reel comedies, and 12 two reel short subjects. No product has been sold to the opposition this year".

On March 11, 1929, Mr. Dippie, Manager of the Vancouver Branch of Fox Film Corporation Limited, wrote Mr. O'Loghlin, General Manager in Toronto, quoting a letter received from Mr. Dewees, in the same character as the letter received from him by the Canadian Universal. The letter continues:

> "I interviewed Mr. Dewees at the first opportunity and he seems to insist that he was promised that he would have the exclusive right to the Fox Trade Mark in Trail, Revelstoke and North Vancouver, and contends that the contracts he entered into with us were based on this understanding. He further said that it was his impression that when you were last in Vancouver you personally acquiesced to such an understanding in my presence. I personally do not recall you ever intimating that we would do anything further than giving him absolutely first choice of every picture under the terms of his selective contract.
>
> "You will no doubt recall the difficulty the exchanges had in Trail some little time ago and the matter finally developed to a point where the Secretary of the Local Board of Trade received instructions from Colonel Cooper and also from Mr. Gabriel Hess that we must offer the Rialto, Trail, (Dewees' opposition) such pictures as Dewees did not want, otherwise we would run the risk of becoming involved in serious litigation if Lauriente of the Rialto decided to take action against any or all of the exchanges for conspiracy or restraint of trade. So far as we are concerned we have religiously adhered to our understanding of the contract. It is true that we have sold a few pictures to the Rialto after they had been turned down by Dewees, and you may be assured that we had them very definitely turned down before we offered them to Lauriente. Personally, I can tell you that the proposition is simply that Dewees is determined to put his opposition out of business by manipulating things so that he will not be able to get any pictures. This is evidently the last resort, as I understand he has tried everything else in order to get control of Lauriente's theatre. There is no question but what this is a plain statement of the facts."

Mr. Dippie also speaks of a visit from Mr. Lauriente and his attorney, when he

> "gave us all to understand that he had been advised by his solicitor that he had a clean-cut case for action if he could not get pictures. Since that time he has evidently managed to get along by using F.B.O. and Warner pictures, he having made contracts with these two exchanges prior to the difficulty arising. In addition to this, he has used a few of our last year's pictures and some from Universal, who, so far as I can learn, look upon the matter in the same light as the writer. In fact, I understand that Mr. Scott wrote very fully to Clair Hague a few weeks ago and Mr. Hague upholds Mr. Scott's attitude, which is the same as the writer's.... As matters stand at present concerning the 1928-29 product, I have sold the Rialto four pictures which Dewees turned down... The whole thing is that Dewees is determined, as I said before, if possible to put his opposition out of business and we must bear in mind the fact that the Lauriente crowd are fairly powerful; that is to say, they have plenty of money. The father of the man who runs the Rialto is reputed to be pretty close to a millionaire and if from a legal standpoint Lauriente could make out a good case for conspiracy or something of the sort, I think it behooves us to be very cautious and at the same time I want to avoid getting into a jam with Dewees.
>
> " P.S. Just a suggestion. It might be possible for you to have a chat with Mr. Hague on this subject."

On March 16, 1929, Mr. O'Loghlin wrote Mr. Dippie in part:

> "We are willing to give Mr. Dewees exclusive use of our product in Trail provided of course that he gives us the proper representation and places us in a position where we can have a reasonable and legal excuse for refusing to supply his opposition, for as you know and Mr. Dewees knows, the opposition exhibitor at Trail is looking for some cause to bring legal action against an Exchange in order to have his position thoroughly defined by law.

> "Mr. Dewees has always appeared to me as a fair minded person... and I am sure that you and he can arrive at some amicable understanding regarding this delicate situation."

It is difficult to appreciate Mr. O'Loghlin's opinion of Mr. Dewees as a fair minded person, in view of what is contained in Mr. Dippie's letter to him of March 11, 1929. However, he changes his opinion, for on May 11, 1929, he writes to Mr. Dippie:

> "Regarding the Trail situation, we are under no obligation to Mr. Dewees in so far as I can see, that he should be permitted to hold us up in the manner he is. Mr. Dewees made certain promises to me last year regarding first runs Vancouver, and he has failed to carry out these promises which I accepted in good faith. The Trail situation is becoming very acute and we do not want to get into any legal jam, and you will therefore take immediate steps to see that either Dewees plays or refuses the pictures."

The Trail situation seems to have been taken up again by Colonel Cooper in the spring of 1929. I find in the file (Exhibit 256), from which considerable of the above correspondence is taken, a letter of April 15, 1929, from Mr. Scott of Canadian Universal, Vancouver, to Colonel Cooper enclosing a copy of a letter received from Mr. Dewees regarding the Trail situation. This letter of Mr. Dewees does not appear in any of the files. In the Cooper Organization file (Exhibit 256), there is a letter dated May 6, 1929, from Mr. Dippie to Mr. O'Loghlin referring to the Trail situation, in which he speaks of Dewees' contention that the arrangement for exclusive rights to the Fox Trade-Mark in Trail was given him, and he says:

> "If we cannot see our way clear to live up to same we should relieve him of his contract obligations.
>
> "I have not been able to get definite expressions from the other exchanges as to the existence or otherwise of any verbal agreements; the only explanation I can give you is that they are 'stalling.' In other words, they are quite evidently catering to Dewees and disregarding the possibilities of trouble with the law in case Lauriente should start any action.
>
> "Mr. Lauriente's solicitor wrote a letter to the secretary of our Board of Trade. This was discussed at an emergency meeting the other day and the result was that in the absence of a definite agreement or understanding amongst the members the secretary forwarded this letter to Colonel Cooper, and you have doubtless learned of the matter."

On May 9, 1929, Colonel Cooper sent a memorandum to General Managers (No. 23) asking for information as to the number of different classes of pictures sold to Dewees for the Liberty Theatre, Trail, and the number sold to the Rialto, Trail, and stating that he proposed to lay the facts before Mr. Hays and ask him what action would be taken in New York, where a similar situation arose in the United States. The memorandum concludes:

> "I trust that I shall have your co-operation in trying to find some solution for this problem which will preserve the good name of the industry in a province where public opinion has been, to some extent, agitated by various events of the last two years."

The Exchanges replied, giving the number of pictures sold in each case and which indicate that Lauriente used all the Warner Brothers product, and 38 features from Columbia, only one feature being sold to the Liberty; the R.K.O. Corporation 25 features to each theatre, whereas Famous Lasky Film Service sold 40 features and 26 comedies to the Liberty and one feature which was left over from a previous contract to the Rialto. No reply from Regal Films Limited appears in the file.

A series of correspondence ensues between Colonel Cooper and Mr. Lauriente in June and July, 1929, extending on into September of that year, when Mr. Lauriente installed a Pacent Sound Machine, when it was used by the Exchanges as an excuse for not supplying films that this was not a satisfactory machine. The fact, however, is that it was in use satisfactorily in some 24 or more theatres, out of a total of 279 sound installations (Evidence, p. 4179). Mr. O'Loghlin (at page 6638) stated that it made no difference as to the selling of pictures whether the projecting machine was a Pacent or not.

The last letter from Mr. Lauriente is on September 23, 1929, replying to a letter from Colonel Cooper to him, in which Colonel Cooper stated:

> "I find that the chief difficulty in the West is the fact that we have not had enough 'sound-on-disk' features."

Mr. Lauriente in his letter says:

> "In reply wish to advise that we don't agree with your statement, regarding product with sound on disks. Every exchange in Vancouver have more sound pictures, part talkies, than we can use......Warner Bros. and First National are holding their products for a year, as other producers did last year, and then it will be offered to us, or if they offered it now we may hurt the opposition business."

Matters seem to have ended with a letter to Mr. Lauriente from Colonel Cooper, dated September 28, 1929, in which he speaks of the difficulty of getting pictures passed by the Censor Board in British Columbia, and in which he makes this statement:

> "I am glad to know that you are getting more product, and that your situation is improving."

The argument used in the correspondence that the Pacent machine was not satisfactory is shown by the evidence to have been purely an excuse for not supplying pictures.

Colonel Cooper in his evidence admits that the claims made by Lauriente in 1928 were justified. It is unfortunate, however, that the matter was not taken up until Lauriente had threatened legal proceedings and until Mr. Donnenworth had given his opinion that such legal proceedings would be successful. Colonel Cooper seems to think that the complaints made in 1929, after the installation of sound in Mr. Lauriente's theatre, were not justified. However, they appear from the evidence to be the same as the other complaints: the excuse given him for not supplying him, that he had an inferior machine, is not justified on the evidence.

In this connection Mr. Frederick Russell Lennon, a director of Exhibitors Co-operative of Canada, Limited, who says he is the second oldest man in Canada in the moving picture business, having had 25 years' experience, is an operator, has been a proprietor and has sold and bought pictures, states (on page 5914) as follows:

> "Q. There is one point in your evidence I omitted to touch upon; that was in regard to the Rialto Theatre in Trail, B.C. What do you know about the situation there?—A. Well, I received several letters from Trail, B.C., from Lauriente—I think his name is.
>
> "Q. Lauriente, yes.—A. An Italian. And he told me that—he cited certain instances where he couldn't get films and where they were holding up the shipment of his films that it would not catch the only train a day, so he would be dark at night and wouldn't—and would be unable— would not be able to give a show.
>
> "Q. Did you meet him at all? All right, go ahead.—A. A little later on I left for the West, and I met Lauriente in Vancouver. He has the day and date and everything else—I might have them too— of the days he was left dark, without film. He had—he explained to me at that time just what difficulty he had in purchasing film to be run at Trail."

At page 5915:

> "Q. Just there, Mr. Lennon. It was said that Mr. Lauriente had a Pacent machine.—A. Yes.
>
> "Q. And that it was not giving satisfactory service and there was a clause in the contract whereby the exhibitor agreed to exhibit the film on a satisfactory projecting apparatus—something to that effect. Did you learn that that was advanced as a reason why Mr. Lauriente was having difficulty?—A. Why should he have any more difficulty in getting Pacent equipment than anybody else.
>
> "Q. Perhaps you had just better answer the question I asked you.—A. No, he didn't say anything about it.

> "Q. You did not learn anything of that kind? Do you happen to know that there were machines of that make in operation at the time in other theatres?—A. Plenty of them.
>
> "Q. I mean, giving satisfactory service?—A. Yes.
>
> "Q. I suppose you couldn't tell me what those theatres were?—A. The National on Yonge Street, the Aster in the city, the Cum-See in Parkdale, were three I knew of in the city; two operating in St. Thomas—the Princess and Tivoli, ... one in Barrie, one in Collingwood."

Further on he says:

> "You couldn't encounter difficulty, because it gave good reproduction."

Under cross-examination Mr. Lennon states that some Pacent equipment had been replaced because the equipment was too small for the theatre.

The situation in Trail does not seem to have improved nor to have been cleaned up, as was claimed, for in Exhibit 308, which is the correspondence of Fox Film Corporation, Limited, with their branches, I find a letter under date of February 15, 1930, from Mr. Dippie of Vancouver to Mr. O'Loghlin, containing this statement:

> "You will notice that Dewees has bought certain pictures for his up country circuit—Trail 11, Revelstoke 11, North Vancouver 9 (these are 1929-30, he had previously bought practically all of the pre-season talkies, Arizona, Speakeasy, etc.). We sell the Rialto, Trail (Dewees' opposition) such pictures as Dewees does not want and these are spot booked from time to time.
>
> "*Re* Colonial, Vancouver: We can only hope to spot book an occasional picture to this house, that is a picture that is not wanted by F. P. or Dewees."

It is argued that Famous Players is not connected with Mr. Dewees in the Trail controversy, inasmuch as Famous Players had no interest in the Dewees Theatre at Trail. It should, however, be considered that in April, 1928, Mr. Henry L. Nathanson of Regal Films was prepared to let Mr. Dewees "go to the devil," that Mr. N. L. Nathanson, then Managing Director of Famous Players, on July 3, 1928, instructed Mr. Kenning not to sell any product to the New Theatre at Trail as "it was his intention to bring Lauriente to time," and that Mr. Dewees was using his buying power acquired in a large measure through his connection with Famous Players' houses in Vancouver, Victoria, Nanaimo and Nelson, for two at least of which he was booking, viz: The Strand, Vancouver, and the Capitol, Victoria.

The attitude of Regal Films Limited later altered almost completely. Mr. Kenning's assistant, writing to Mr. H. L. Nathanson on June 3, 1929, says:

> "Mr. Lauriente of the Rialto, Trail, was in this office yesterday in quest of pictures. I suppose Mr. Kenning has advised you of the situation in Trail—which is that if we play with Lauriente we are out of all Dewees houses, and if we do not play with Lauriente we are in all Dewees houses. Dewees has purchased the Metro product, only leaving the Pathe open for the Rialto Theatre, Trail. It seems too bad that we cannot sell the Rialto the Pathe product but if we do so, we will most certainly have a terrible time trying to do anything with Dewees, as we understand one of the other Exchanges—Universal—are having quite a time with him now over this very same thing.........I made no promises.......... as a matter of fact was very vague in my conversation with Mr. Lauriente, and did not commit Regal Films in any way at all."

Again on June 25, 1929:

> "I offered him thirty comedies that had been turned down by Dewees."

On July 4, 1929, Mr. H. L. Nathanson authorizes the sale of the Pathe product to Mr. Lauriente, but Mr. Hill, branch manager at Vancouver, writes to Mr. Hayner on September 9, 1929, pointing out the danger in selling to Lauriente even the pictures that Dewees does not want.

So it appears that even at this late date Mr. Lauriente is still having difficulty in getting pictures and has to be content with what Mr. Dewees does not want. It is quite clear that Mr. N. L. Nathanson, in his capacity of Managing Director of Famous Players, was able to frustrate the efforts of Mr. Lauriente to get a satisfactory supply of films for his theatre and that this was in pursuance of his determination to " bring Lauriente to time," even though Famous Players had no direct interest in Dewees' Trail Theatre. The conclusion is forced on one that this must have been not so much for the purpose of advancing the legitimate interests of Famous Players or protecting those interests as it was for the purpose of injuring the business of Lauriente.

XIV.—STOCK CONTROL OF FAMOUS PLAYERS

Considerable discussion took place before me as to control of Famous Players and the methods adopted to acquire control and further concerning the fact that Famous Players Canadian Corporation Limited is in stock control of Paramount Publix Corporation, a United States company having its head office in New York, and having for its President and controlling spirit, Mr. Adolph Zukor who is also President of Famous Players and no doubt directs its policy. I have been strongly urged to fully investigate this question, which is a burning one, and of great interest to a considerable body of minority Canadian shareholders of Famous Players who have refused an offer of Paramount Publix made in April, 1930, to exchange four shares of Paramount Publix Corporation for five shares of Famous Players.

Except as to the fact that the share control of the Canadian corporation is in Paramount Publix, who also control indirectly, by share ownership, the two principal distributors in Canada, viz: Regal Films Limited and Famous Lasky Film Service Limited, I could not and cannot now see that the methods adopted to obtain control are within the scope of this investigation or are relevant to the question before me, which is whether a combine under the Act exists. Nevertheless under considerable pressure from counsel for and representatives of the minority shareholders, and at the suggestion of Mr. Arthur Cohen of Famous Players, I devoted half of one day to hearing the evidence of Mr. I. W. Killam, of Montreal, President of the Royal Securities Corporation, which appears on pages 6849-6933 of the evidence. From the evidence and from my findings on pages 16 to 18, inclusive, of this report, it is quite apparent that substantial control of Famous Players has from its inception been in Mr. Zukor and his companies and associates.

There is a good deal of misconception and lack of understanding of the actual transactions, but if a large number of Canadian shareholders of Famous Players chose to accept Mr. Zukor's offer on behalf of Paramount Publix, to exchange shares of that company for those of the Canadian company, it seems to me that that is really their own business, and it is equally the business of the minority shareholders if they chose to reject this offer, and preferred to hold their original shares in the Canadian company.

It is said that these shares were sold on the representation of Greenshields & Company of Montreal, who sold to the public at least part of these shares (Exhibit 323), that " control of the Company is being assured to Canada, etc." If these dissatisfied shareholders have been wronged, it seems to me their proper course would be to seek a remedy in the courts against those who sold them the shares, and that no finding of mine, and no action that could be taken under the Combines Investigation Act, would advance their interest; and so, other than a bare recital of the facts, I make no finding.

XV. ARGUMENT AND FINDINGS

I have had the benefit, both during the taking of evidence and during the argument, of the assistance of able counsel, for the Commission and for the various interests involved in the investigation. Particularly forceful arguments were presented to me on behalf of Famous Players, certain distributors, the Cooper Organization, and Columbia Pictures of Canada Ltd.

It was pointed out that the Combines Investigation Act was an Act relating to Criminal Law, as decided by the recent judgment of the Judicial Committee of the Privy Council, delivered on January 29 of the present year. I have been able to fully peruse the judgment of the Honourable Mr. Justice Wright of the Supreme Court of Ontario, in the case of *Rex vs. Singer et al,* commonly known as the A.B.C. case, in which he agrees to this proposition, and which is without question the rule to be adopted. It is true, however, that the tribunal must have regard to the plain meaning of the statute, when once that meaning appears satisfactorily clear. So far as the application of the statute to the evidence and circumstances of this inquiry is concerned, the wording of the statute leaves me without doubt as to its meaning, although its construction is somewhat involved, and possibly justifies some of the criticism to which it was subjected in the argument. In other words, I must be satisfied that the persons named in the Order in Council, or some one or more of them, have done something which the statute prohibits, and that there is a combine within the meaning of the statute. Once I am satisfied of this, the rule as to strict construction has in my opinion been satisfied.

Many cases were cited to me on the question whether, granted there were a combination amongst some one or more of those named in the Order in Council, this combination had not been shown to be " to the detriment or against the interest of the public," within the meaning of the Combines Act, and that the expression " public policy " is equivalent to the expression " to the detriment or against the interest of the public." A number of English cases were cited as to what sort of combinations were and were not against " the public policy."

Without attempting to analyse these cases, it seems to me that most of them might well have been decided differently had there been a law in force in England, such as the Combines Investigation Act, and that what is or what is not " to the detriment or against the interest of the public " is a matter of fact, to be determined on the circumstances of the individual case.

Considerable argument also took place on the meaning of the expression " the public." It seems sufficient for me to say that in my view any combination, of a class described in the Act, which operates to the detriment or against the interest of any considerable portion of the Canadian public, or of the citizens of any particular area, or portion, or geographic subdivision, would be a combine operating " to the detriment or against the interest of the public." In other words, that the public referred to is not necessarily the whole of the Canadian public, but may be composed of the citizens of a comparatively restricted area, as for example an individual city. Instances in our own courts in both the Grocers'[1] and the A.B.C. cases are examples of this. In *Rex vs. Singer,* the operations therein complained of were all confined practically to the city of Windsor, and in the Grocers' case to the city of Toronto.

It is unquestionably true that a mere combination, the purpose of which is to regulate supply and keep up prices, is not necessarily to the detriment of the public, because, as pointed out by Lord Haldane in one of the cases, " an ill-regulated supply and unremunerative prices may, in point of fact, be disadvantageous to the public "; but he does say, however, that " it must always be a question of circumstances whether a combination of manufacturers in a particular trade is an evil from a public point of view." In spite of Mr. Johnston's very well-considered and logically put argument, my responsibility here, as I see it, is to find as a fact whether there is a combine which has operated, or is likely to operate, to the detriment or against the interest of the public, in, as I have conceived it, the meaning in which the statute uses the expression, and this notwithstanding that, as one of the judges has said, " public policy is an unruly horse and dangerous to ride."

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[1] *Attorney General for Ontario v. Canadian Wholesale Grocers' Association,* 53 Ontario Law Reports 627.

A parallel was attempted to be drawn in the argument, between the chain store and the large departmental stores on one hand, and Famous Players on the other, in that these large merchandizing organizations are able to purchase goods more cheaply than their smaller competitors, as is the case with Famous Players; and that no one can say that these merchandizing organizations were combining within the meaning of the Act, because their operations were not to the detriment of the public. There is, however, this important distinction, that it is claimed on behalf of the chain and departmental store that they are providing a useful service and enabling the public to buy more cheaply than they otherwise would, whereas in the case of Famous Players, so far as the evidence goes, the reverse is the situation. Neither can it be said that by means of the purchasing power of the chain and departmental stores the available product is practically controlled by a combination such as the distributors in Canada who control, as heretofore pointed out, at least 95 per cent of the product.

It is also argued that the statute, by the use of the words " consumers, producers or others ", indicates that the intention was that the Act should apply only to the necessities of life, things which are bought and sold in the ordinary course, and not in the supply of entertainment. The answer to that argument is, it seems to me, that what is dealt in, in the moving picture business, is an article of commerce, viz., the positive print. The business itself is continually spoken of by those engaged in it as an industry. True it has its origin in an art, but in the hands of the persons who at present control the industry it has become purely commercial. The pictures are judged and chosen by their power to produce box office receipts, and largely depend for their popularity upon what is termed " exploitation." The positive prints while not sold outright are spoken of in the trade as being sold, and in my opinion are as much an article of commerce as a gramophone or a radio or a gramophone record, or the " boiler plate " which is shipped weekly, set up by the page for printing the inside pages of the country weekly newspaper. I think the business is well within the purview of the Act.

Mr. Johnston cites the case of the Ontario Salt Company vs. Merchants Salt Company (18 Grant 540) where several incorporated companies and individuals engaged in the manufacture and sale of salt entered into an agreement whereby it was stipulated that the several parties agreed to combine and amalgamate under the name of the Canadian Salt Association, for the purpose of successfully operating in the business of salt manufacturing, and which provided that all the parties to it should sell all the salt manufactured by them through trustees of the association and should sell none except through the trustees. Mr. Justice Strachan, at page 542, says:

> " It is out of the question to say that the agreement which is the subject of this bill had for its object the creation of a monopoly, inasmuch as it appears from the bill that the plaintiffs and defendants are not the only persons engaged in the production of salt in this province, and therefore the trade in salt produced here by other persons, and in salt imported from abroad, will remain unaffected by the agreement, except in so far as prices may possibly be influenced by it."

The fundamental difference between this case and the case under investigation will at once appear, when it is recalled that of all the pictures distributed in Canada, the distributors named in the Order in Council and the members of the Film Boards of Trade control at least 95 per cent, and that the balance are negligible both as to quantity and quality.

Mr. Johnston also urged that in order that an incorporated company should be held to be a combine it must be established by the corporate acts of the company. It seems to me that this argument can be disposed of by reference to the fact that corporations can act only through their directors, officers or employees. If the evidence disclosed a few single isolated acts of minor employees, the argument could very properly be given effect to, but where, as here, the acts were many and indicated a well-defined course of dealing, such as must unavoidably have come to the attention of those responsible for the policy of the companies involved, I cannot but find that the company is responsible as such for a policy which would permit the things to be done which have been established in evidence. Further, a great many of the acts and agreements indicating a combination between Famous Players and others were in fact corporate acts, as is disclosed in the minutes of meetings of directors which were from time to time approved at such meetings of directors and eventually at the annual meetings of shareholders.

Mr. Parmenter urges that what is sold by the distributors to the public is more in the nature " of service " than of a commodity, and that what are sold to the exhibitors are rights and not commodities, and that therefore the Act does not apply. I have already intimated and I now repeat that the positive films, when obtained, are articles of trade and commerce.

Mr. Ludwig has pointed out to me in his argument that most of the independent exhibitors called as witnesses excepted Columbia, and made a distinction between that exchange and other alleged wrong-doers, and that so far as a supply of pictures is concerned Columbia did much better than most, if not all, of the other exchanges in this respect. In addition to this Columbia was not a member of the Cooper Organization, and if the matter rested there I should be inclined to hold that this distributor was not a party to any combine or concerned therein, or privy thereto.

Columbia did participate with the other General Managers in limiting their freedom to contract with exhibitors, except upon the Standard Exhibition Contract, containing the Arbitration Clause, and was a party to the arrangement which imposed this contract upon the exhibitors. It also has a franchise agreement with Famous Players. Though it is stated that this contract has never been acted upon, nevertheless it has never been cancelled, and is still in force and available to Famous Players. It is also a fact that stock holdings in Columbia Pictures of Canada Limited are about 25 per cent in Mrs. Arthur Cohen, wife of the General Manager of Famous Players, and the balance distributed between the Allens, with whom Famous Players have many theatre affiliations, Mr. Rosenfeld, who is the Manager of Columbia Pictures of Canada Ltd., and Mr. H. L. Nathanson, General Manager of Regal Films, and brother of Mr. N. L. Nathanson, former Managing Director of Famous Players. Exhibit 108 illustrates what influence this relationship has in the making of contracts. This is a contract of January 21, 1928, between Famous Players and Rex Theatres Ltd., in which the Allens were shareholders, clause 13 of which is as follows:

> " The Corporation agrees to contract for an average of at least two feature pictures per month from Columbia Pictures of Canada Limited, such feature pictures to be contracted for upon the same rental terms as other similar feature pictures are procured from other film exchanges."

Asked what was that, Mr. Arthur Cohen, on page 1335 of the evidence, states:

> "They were interested in Columbia Pictures, the Allens, or, let us say, Herbert Allen, because I don't know to what extent the others were."

As to how they were interested, Mr. Cohen states:

> "They operate that Company to-day. Columbia Pictures Limited is a distributing corporation operated by Herbert Allen and others."

Columbia Pictures is also a member of the various Film Boards of Trade operating throughout Canada, and has participated in the activities of these Boards, including the activities of the Credit Committees. The Mechanic case, above referred to, is an example where this distributor participated in these activities.

This distributor has also participated in granting protection for unreasonable lengths of time, and has from time to time acquiesced in the demands of Famous Players in regard to protection, which, having regard to the ownership of its share capital, is not to be wondered at. It is only fair to say that the participation of this exchange in any acts constituting them a party to the combine has not been to as great an extent as most of the other distributors.

Mr. Ludwig also cited a case of *The People of the State of New York vs. Klaw and Erlanger,* reported in 55 Miscellaneous Reports, page 72 (Court Sessions). In this case the defendants were indicted under a section of the New York Penal Code, and as considerable stress was laid on this case by Mr. Ludwig, I will quote here his quotation from the headnote of the case:

> "Where persons who own or control theatres through the country arrange for booking attractions at their theatres so as to enable companies to save expense by making continuous tours without retracing their steps, and agree not to produce in their theatres attractions controlled by rival interests and only such attractions as agree not to play in rival theatres in any city where they have a theatre, and bind parties by booking contracts to play in their theatres in cities where they have them or to remain out of such cities and not to play in certain cities during specified periods of time and not to play in other theatres in the United States or Canada during the theatrical season covered by such booking contracts, such acts do not disclose a purpose to prevent any one from exercising a lawful trade or calling, and are not unlawful, and do not constitute the crime of conspiracy in violation of subdivisions 5 and 6 of section 168 of the Penal Code."

The judgment as quoted by Mr. Ludwig continues:

> "It will be seen, therefore, that this is a controversy between opponents in business, neither side trying to help the public. Nor will the public be the gainer by the success of either. The motive behind the action of each party is self-help. It is the usual motive that inspires men to endure great hardships and take enormous risks that fortune may come. In a struggle which acquisitiveness prompts but little consideration is given to those who may be affected adversely."

A perusal of the judgment in this case leads one to the conclusion that the trial Judge in the case thought that the indictment was preferred, not as a matter of affecting the public, but as a matter affecting only the rivals of the accused. The reasoning in the judgment hardly commends itself to me, and in any event the Combines Investigation Act is entirely different from the section of the New York Penal Code under which this indictment was preferred.

Mr. Ludwig endeavoured to draw a parallel by suggesting that the persons complaining in this inquiry were the rivals of Famous Players in the theatre business, and even if that is so it does not relieve me of my responsibility, which is to determine, not what induced the proceedings, but whether or not a combine exists.

Mr. Mason, acting for the distributors other than Columbia, relies on the case of *Hay vs. Bricklayers' Local Union* (63 Ontario Law Reports 418), and refers to the judgment of Mr. Justice Middleton at page 427, where he quotes from a judgment of Lord Cave:

> "The action failed because the defendants acted as they did for the sole purpose of protecting their own trade and were not actuated by spite against the plaintiff, nor had they any desire to injure him."

This was a civil action based upon an allegation of malice which failed. No further comment is necessary.

Mr. Mason further cited Mr. Bryce's book on the American Commonwealth as stating that the Supreme Court of the United States was a law-making as well as a law-administering body. While this may be so, I only adopt the language of Mr. Justice McReynolds in the cases hereinbefore referred to, as aptly describing the Canadian situation as I find it in fact. I do not cite these judgments as in any way binding on questions either of law or fact.

Mr. Mason further argued that the small independent exhibitors had no complaint to make in respect to their treatment by the distributors, because it cost in some cases more to distribute the picture to the small exhibitor than the rental received by the exchange for it. It seems to me the basis for this computation was fallacious. Mr. Masters, who gave the evidence, divided the total cost by the total number of runs and thus struck an average. This in my view is not a fair way to make the computation. In addition it is frankly admitted by Mr. Masters that the more pictures he sold, the less would be the selling cost per picture.

Before leaving Mr. Mason's argument I think I ought to deal with some special circumstances in regard to United Artists Corporation Limited. This distributor has not followed the practice of making pre-season commitments with Famous Players and does not, as previously pointed out, follow the practice of block booking to the same extent or in quite the same way as the other exchanges, being limited to block booking the pictures of an individual artist producer member. Up until the season of 1930-31 the United Artists sold a great deal of their product to Famous Players, and, in common with other distributors, held their product for that corporation until they decided whether they wanted it or not. For the present season United Artists have not to date been able to sell any pictures to Famous Players, and consequently during the current season the independents are reaping the benefit of that situation, and are thus enabled to get pictures to the number of 19, which formerly were held for Famous Players. This distributor is a member of the Cooper Organization and of the Film Boards of Trade, and its officers are active in enforcing the arbitration clause in requiring deposits, and the other activities of these bodies which are mentioned when speaking about the distributors; and they also agreed not to contract except upon the terms of the Standard Exhibition Contract, involving the Arbitration Clause and its other features as previously discussed.

Special mention ought also to be made of Tiffany Productions of Canada Limited, which as previously pointed out occupies an office with Universal Film Co., Ltd., which does the actual physical distributing of the pictures of Tiffany Productions Inc., sold by Tiffany Productions of Canada Limited.

The Canadian Tiffany Company also distributes, through Universal and for British Gaumont Productions of Canada Ltd., the pictures of British Gaumont Corporation Ltd., and Gainsboro Productions Ltd.

Tiffany Productions of Canada Ltd., is not a member of the Cooper Organization, except indirectly by virtue of its connection with Canadian Universal Film Co., Ltd.

Owing to the fact that this distributor and Columbia Pictures of Canada Ltd. are not members of the Cooper Organization, the memoranda to General Managers are sent to their General Managers as such, and as I can see no real distinction between participation in the activities of the Cooper Organization by the distributor representatives as directors or members of that organization, and participation by concurrence in their activities as General Managers of the distributor companies; and as Tiffany Productions of Canada Ltd. is a member of the Film Boards of Trade, I conclude that they are, in respect to the Standard

Exhibition Contract, arbitration, requiring of deposits and otherwise, in the same position as the other distributors. This distributor has not been able to obtain commitments from Famous Players and sells to it very few pictures for first runs downtown. It is not named in the Order in Council, but is a party, or privy to, or knowingly assists in the formation or operation of such combine as exists.

Mr. Starr in his argument adopted the arguments of the other counsel insofar as they related to his client, and pointed out various acts of the Cooper Organization which were, according to his contention, beneficial to the exhibitors or to the industry as a whole.

As I have already dealt with this subject, there is no need of repeating my findings here, other than to say that any benefit to exhibitors has been incidental to the main and primary purpose of the Cooper Organization, which has been to advance the interests of the New York Producers and their Canadian subsidiaries. For example, Colonel Cooper's success in having amusement taxes and censor fees lowered might have the effect, as he admits, of enabling the exhibitors to pay more money for pictures.

Mr. Starr also urges that, because the Cooper Organization is not directly engaged in the sale of pictures or the leasing of positive prints, their activities cannot be said to be within the provisions of the Act. My view is that the provisions of the Act make it quite clear that any one who is a party, or privy to, or knowingly assists in the formation or operation of a combine is in the same position as any one actively engaged in the business in respect to which the combine exists.

XVI. GENERAL CONCLUSIONS

My conclusions and findings in the circumstances, set out in the foregoing findings of fact, supplemented by such findings as I am about to make under this heading, are:

(1) A combine exists in the motion picture industry in Canada within the meaning of the Combines Investigation Act.

(2) This combine exists and has existed at least since the year 1926.

(3) The said combine exists, through the participation therein of the parties hereinafter named as parties to the combine,

- (*a*) By general agreement and concerted action and acquiescence in a system of "*protection*" by which Famous Players and other first run downtown theatres, and first run theatres in zones, where such exist, receive protection for a clearance period far beyond what could possibly be justified if it were for the purpose of protecting the business of these first run theatres and not for the purpose of injuring other independent exhibitors.
- (*b*) By the "*booking arrangements*" entered into between Famous Players and other companies and individuals, by which Famous Players contracts for the pictures, and books for the theatres owned or operated by those others, thus increasing the purchasing power of Famous Players, which purchasing power has attained such magnitude that real competition on the part of the independent exhibitor, in dealings with the distributors, is practically impossible, when considered in the light of other arrangements and associations of Famous Players and the evidence as to what has happened in regard to contracts for pictures.
- (*c*) By the entering into, of Famous Players with other theatre operators, of "*pooling agreements,*" under which the contracting for and booking of pictures for the theatres involved is done by Famous Players, or under their supervision and guidance. This has the effect of further increasing the purchasing power and of lessening competition, as mentioned in the preceding paragraph.
- (*d*) By the entering into of "*operating agreements*" by Famous Players with other exhibitors, under which Famous Players operate the theatre and contract for and book the pictures. Usually these agreements involve no capital expenditure on the part of Famous Players or their subsidiaries, including under the term "subsidiaries" companies in which it has a substantial stock holding, and they almost invariably provide that Famous Players acquires a 50 per cent interest in the profits. The list of theatres affected by these operating agreements, 24 in number, involving 35 theatres, some of which are closed, appears on pages 13, 16, 17 and 18 of Exhibit 6. The effect of these agreements increases the buying power and lessens the competition, as mentioned in paragraph (*b*).
- (*e*) By the *acquisition* by Famous Players, their subsidiaries and affiliations, *of many theatres,* sometimes by threats of building theatres in opposition to the theatre sought to be acquired, sometimes by threatening to cause the withholding of a supply of suitable pictures, sometimes by taking steps to actually withhold such supply, as evidenced particularly, but not exclusively, by the operations of

B. & F. Theatres Limited, and of Mr. N. L. Nathanson, when manager of Famous Players, as disclosed by the evidence of various witnesses, including Mr. Wainwright; and by the improper use of Famous Players' buying power and paramount position in the moving picture business in Canada, looking to the concentration of moving picture theatres, particularly in the larger cities and towns and in the strategic positions therein, in the hands of Famous Players, their subsidiaries and affiliations, and to the lessening of competition in the operation of such theatres.

In these activities the distributors hereinafter named as parties to the combine, participated, by various agreements and arrangements with Famous Players, their subsidiaries and affiliations, to withhold pictures from the independents for an unreasonable length of time, either at the specific request of Famous Players or their subsidiaries or affiliations, or through the granting of unreasonable clearance periods under the guise of protection.

(*f*) by the *purchase of theatre sites,* and the obtaining of *options* on such, by Famous Players, which in some instances were used to deter others from building theatres, thereby lessening competition.

(*g*) By the ability of Famous Players to obtain from the distributors *contracts* or *arrangements, verbal or otherwise,* by which Famous Players is to have *first choice of the pictures* to be released by the individual distributors during the releasing season. This practice prevails to such an extent as to embrace all of the pictures released during the current season for exhibition in Canada, with the possible exception of the productions of United Artists, which for this season have not sold any pictures to Famous Players, but, on the evidence of Mr. Masters, the manager, still hopes to do so. The effect of this arrangement is to withhold films from theatres in competition with the theatres of Famous Players, their subsidiaries and affiliations, and, in connection with other practices and arrangements mentioned herein, has had the effect of lessening the ability of the independent theatre owners to compete with Famous Players on a fair basis and to obtain an adequate supply of pictures deemed by the independent exhibitors suitable for exhibition in their theatres, and of compelling the independent exhibitors to show to their patrons pictures which they otherwise would not have presented and of an inferior quality.

(*h*) By closing and keeping closed by Famous Players certain theatres which are a constant menace to anyone contemplating building a theatre in competition with the theatre or theatres of Famous Players, their subsidiaries or affiliations. An example of how a closed theatre may be used in this way is mentioned previously in this report (see page 101), in reference to a proposed new theatre in Stratford.

(*i*) By Famous Players obtaining from the distributors a *lower price* for their pictures exhibited in its theatres than is obtainable by the independents, and usually, except in the case of houses where vaudeville is shown, at a rental on a *percentage* of the gross receipts of the theatre, which means that Famous Players does not pay for the picture until after it is shown, whereas the independent, with a limited number of exceptions, must pay cash in advance or C.O.D. Famous Players also are, on occasions, able to obtain pictures *without first fixing the rental* and in many cases are able to obtain *adjustments* of prices already fixed after the exhibition of the picture, thus creating a condition where the competition between Famous Players and the independent exhibitors is quite unfair.

(*j*) By the obtaining by Famous Players from distributors of *priority selective* contracts. Famous Players is enabled in this respect to enter into unfair competition with the independent exhibitors.

By reason of the agreements and arrangements and other activities above mentioned, Famous Players has been able to acquire, particularly in the large cities and towns in Canada, where the most profitable business is, such substantial control as to reduce competition to a minimum, and to make it extremely difficult for the independent theatre to survive, and to make possible the booking arrangements, pooling and operating agreements and acquisitions above mentioned. Particulars of the dominant position of Famous Players appear on pages 101 to 106 of this report.

(*k*) By the agreement of the distributors and the producers named hereafter as parties to the combine to contract with exhibitors only in accordance with the terms of the Standard Exhibition Contract, and, since May 15, 1930, of the Canadian Exhibition Contract, containing for the exhibitor extremely onerous terms.

(*l*) By concerted action in regard to arbitration.

(*m*) By concerted action in respect to the operations of Credit Committees, and members of the Film Boards of Trade and the Cooper Organization in respect thereof, in connection with Credit Committee rulings.

(*n*) By concerted action of the distributors in the adoption of rules of the Credit Committees and rules of arbitration suited to their own purpose.

(*o*) By undertaking to enforce the awards of arbitrators by harsh and unreasonable means, leaving the exhibitor, against whom an award has been made, entirely at the mercy of exchanges, who, in respect to contracts entered into, up till May 15, 1930, at least, were required to enforce the rule as to deposits, and they may still do so.

(*p*) By the system of block booking and blind booking, which has been and is generally in force.

(*q*) By concerted action in these respects, participated in by the Cooper Organization, the distributors hereafter named as parties to the combine, and by Famous Players, through its connection with Famous Lasky Film Service and Regal Films, and its membership in the Cooper Organization, and the activities of its officers in connection therewith, and with the Film Boards of Trade and the Credit Committees.

(*r*) By concerted action of the general managers of the distributor companies in Canada, and their co-operation with the Cooper Organization.

(*s*) By the domination of the Cooper Organization by the producers in New York, through the Hays' Organization, and the constant consultation and co-operation with, and supervision by the Hays' Organization of the Cooper Organization.

(*t*) By the campaign of propaganda referred to previously in this report on the part of the Cooper Organization and its employees.

(*u*) By the interference, and attempted interference of the Cooper Organization with censorship throught Canada.

(*v*) By the attempts of the Cooper Organization to affect legislation favourable to the producers and distributors.

(*w*) By the efforts of the Cooper Organization and the distributors, and Famous Players, to acquire and retain Canada as a field for the exploitation of their pictures, produced in the United States as nearly as may be to the exclusion of others.

PARTIES TO THE COMBINE

I find that the following named in the Order-in-Council of September 23, 1930, are parties or privies to or knowingly assisted in the formation or operation of the combine within the meaning of the Combines Investigation Act, namely:

1. Exhibitors:

(*a*) Famous Players Canadian Corporation Limited.
(*b*) B. & F. Theatres Limited.
(*c*) Eastern Theatres Limited.
(*d*) Premier Theatres Limited.
(*e*) Mansfield Theatre Company Limited.
(*f*) United Amusement Corporation Limited.
(*g*) Theatre Holding Corporation Limited.
(*h*) Hamilton United Theatres Limited.

2. Producers:

(*a*) Paramount Publix Corporation
(Paramount Famous Lasky Corporation named in the Order-in-Council is the predecessor of Paramount Publix Corporation, and there is no Company of that name now in existence.)

3. Distributors:

(*a*) Canadian Educational Films Limited.
(*b*) Canadian Universal Film Company Limited.
(*c*) Famous Lasky Film Service Limited.
(*d*) Fox Film Corporation Limited.
(*e*) R.K.O. Distributing Corporation of Canada, Limited.
(*f*) Columbia Pictures of Canada Limited.
(*g*) Regal Films Limited.
(*h*) United Artists Corporation Limited.
The above named distributors are incorporated in Canada.
(*i*) First National Pictures Incorporated.
(*j*) Warner Bros. Pictures Incorporated.
(*k*) Vitagraph Incorporated.
The three last named are not incorporated in Canada, but distribute through Vitagraph Limited.
Also the following distributors not named in the Order-in-Council, namely:
(*a*) Vitagraph Limited.
(*b*) Tiffany Productions of Canada Limited.

4. Motion Picture Distributors and Exhibitors of Canada:

I also find that *B.C. Paramount Theatres Limited, Paramount Theatres Limited,* and *Radio-Keith-Orpheum (Canada) Limited,* not named in the Order-in-Council, are parties to the combine.

There are a number of other companies which might be properly included in this list but as their corporate entities are so closely identified with Famous Players, I can see no good purpose that would be served by naming them in this interim report. There are also a number of individuals with respect to whom I hold the same view.

I further find that the combine so found by me has operated and is likely to operate to the detriment or against the interest of the public.

This is an interim report as called for and required by the Minister under Section 27 of the Combines Investigation Act. There are many lines of inquiry and many companies left to be investigated. I am satisfied that the investigation of these would not only emphasize, but add to, and considerably widen the findings which I have made, and might possibly involve other persons. I trust, however, that such findings as I have made will answer all present purposes.

It ought to be mentioned that, under its present management, Famous Players does not appear to me to be conducted with quite the ruthless disregard of the rights of others, and of the public interest, as was formerly the case; though the present manager is, however, still under the direction of the United States interests who control the Company. As an illustration of how far things are still carried, it might be mentioned that, failing to agree with the distributors on the length of protection or clearance periods, a demand has been made for protection for periods very much in excess of anything heretofore contemplated or demanded.

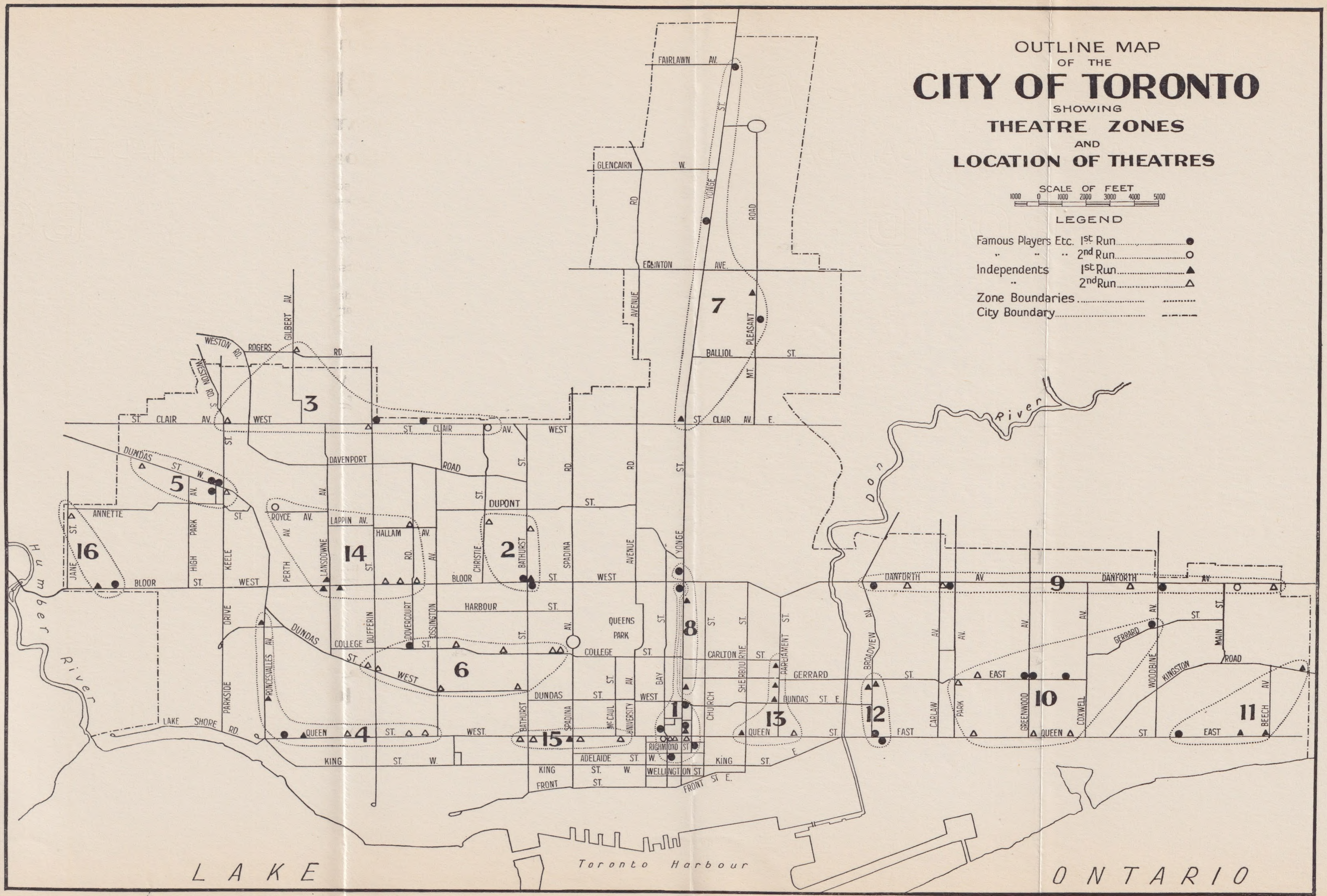
I feel that I should not close the report without a word of thanks to the Counsel who appeared in the investigation, whose work and very able arguments have been of the greatest possible assistance to me. I also desire to express my appreciation of the facilities which were afforded me by the officers of the Famous Players, the distributors and the Cooper organization.

All of which is respectfully submitted.

Yours faithfully,

(Signed) PETER WHITE,

Commissioner.



OUTLINE MAP OF THE

CITY OF TORONTO

SHOWING

THEATRE ZONES

AND

LOCATION OF THEATRES

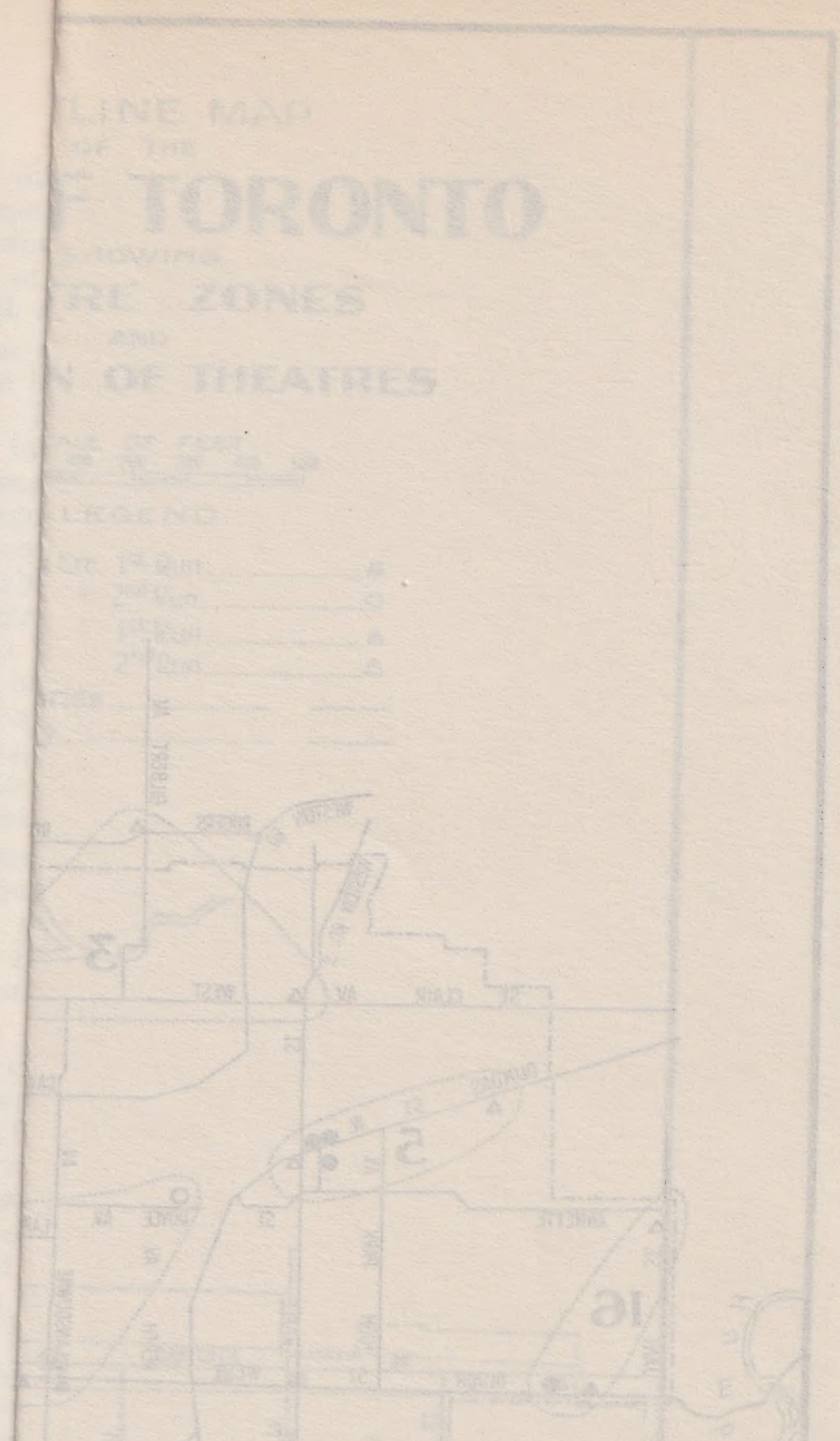
SCALE OF FEET

1000 0 1000 2000 3000 4000 5000

LEGEND

Famous Players Etc.	1st Run	●
" " "	2nd Run	○
Independents	1st Run	▲
"	2nd Run	△
Zone Boundaries		....
City Boundary		—·—·—

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
FAIRLAWN AV.
GLENCAIRN W.
EGLINTON AVE.
BALLIOL ST.
MT. PLEASANT ROAD
YONGE ST.
AVENUE RD.
ST. CLAIR AV. WEST
ST. CLAIR AV. E.
WESTON RD.
WESTON RD. S.
ROGERS RD.
GILBERT AV.
DUNDAS ST. W.
DAVENPORT ROAD
DUPONT ST.
ANNETTE ST.
ROYCE AV.
LAPPIN AV.
HALLAM ST.
BLOOR ST. WEST
HARBOUR ST.
JANE ST.
HIGH PARK AV.
KEELE ST.
PERTH AV.
LANSDOWNE AV.
DUFFERIN ST.
DOVERCOURT RD.
OSSINGTON AV.
CHRISTIE ST.
BATHURST ST.
SPADINA RD.
SPADINA AV.
QUEENS PARK
COLLEGE ST.
DUNDAS ST. WEST
RONCESVALLES AV.
PARKSIDE DRIVE
LAKE SHORE RD.
QUEEN ST. WEST
KING ST. W.
ADELAIDE ST. W.
RICHMOND ST.
WELLINGTON ST.
FRONT ST.
FRONT ST. E.
KING ST. E.
McCAUL ST.
UNIVERSITY AV.
BAY ST.
CHURCH ST.
CARLTON ST.
SHERBOURNE ST.
PARLIAMENT ST.
GERRARD ST. EAST
DUNDAS ST. E.
QUEEN ST. EAST
BROADVIEW AV.
DANFORTH AV.
CARLAW AV.
PAPE AV.
PARK AV.
GREENWOOD AV.
COXWELL AV.
WOODBINE AV.
KINGSTON ROAD
MAIN ST.
BEECH AV.
Don River
Humber River
Toronto Harbour
LAKE ONTARIO


LINE MAP
OF THE
TORONTO
SHOWING
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AND
N OF THEATRES
LEGEND